

THE LAY-MANS LAWYER,

REVIEVVED & ENLARGED.

BEING

A Second part of the Practice of the Law, relating to the punishment of offences committed against the Publique Peace.

CONTAINING

The Forms of Process, Indictments, and proceeding to Judgement, as well in all manner of Crimes deserving Death, as others, of corporall and pecuniary punishments: Also the severall Causes and Cases wherein such respective proceedings ought to be had; Collected into Heads out of the Books of Law at Large.

ALSO

A DISCOURSE OF PARDONS AND Remissions of Punishments: The Office and Duty of a Goaler, Constable, and other Assistants for preservation of the PEACE.

By **THO: FORSTER** Gent.

With an exact Table, relating to all the matters therein contained.

L O N D O N,

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T O

My much honoured Friend

WILLIAM JAMES

ESQUIER.

One of the Justices of the
PEACE & QUORUM

In the County of

KENT.

SIR,

Not to informe your
judgement in any
thing concerning the
Subject matter of these
my poor labours (your wisdom
and approved knowledge there-

A 2

in,

The Epistle Dedicatory.

in, and all other Learning being so generall, that I can add nothing unto it) but to inform the world how much I honour you, and your vertues, and by how many Obligations I stand engaged to you, for the many signall favours you have vouchsafed me since the time you first admitted me into your familiar acquaintance; I dedicate the first fruits of my spare time unto you as an unworthy New years giift: It is true, that a great part of this Book came into the world two yeares since; but for some reasons, best known to my selfe, not owned by me; Neverthelesse it found such acceptance, that in a fevv Termes a whole Impression went off, which

The Epistle Dedicatory.

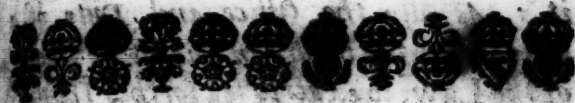
which so encouraged them who had (I may say) the first imperfect Copy (occasioned by my absence) that they importuned me to review it, correct it, and add something more unto it, which according to the best of my judgement I have done, and if any way profitably, then according to mine owne desire: As it is, I have made bold to make Choice of you for the Patronage thereof; intreating you not to examine it as a severe Judge, but as an indulgent friend to the many infirmities and imperfections of;

*Your humble and affectionate
old Servant.*

THO: FORSTER.

which is once traced from who
had (I may say) the highest interest
(by accident) in my silence)
that they mentioned me to
a new friend and that four-
thousand miles which occur-
red to the staff of my judgment
I was done and it was pro-
posed to record to mine
own delight. It is, I think
said to make choice of your
interest in the most interesting
you not to mention it. I have
just been reading the third
of the many estimates and im-

THE FORSTER



TO THE READER.

Reader.

I Have adventured to put to publick view
this second part of the Practice of the
Law, containing the formes of all man-
ner of Warrants and Precepts sent out
from Authority, to attach and apprehend
all manner of Offendors against the publick
Peace; the formes of all Mittimusles
made thereupon, of all Indictments, for all
sorts of Offences, from the highest to the
lowest, very exact: Supersediaffes,
Certioraries, the proceedings in tryalls
against all Offendors for Treason, Felony
&c: together with the whole Learning of
Clergy, who shall have it allowed, and
in what Offences, and who shall not have
it:

To the Reader.

it : As also the Office and Duty of a Gaoler, never before in any of the Books of the Law, so exactly set forth ; The duty of Church-mardens, so far onely as they are impowred by diuers Statutes, to be assistant to the Constables, the Ordinary conservators of the Peace in this Commonwealth : In reading all which thou wilt very much better thy Judgement, if thou readeest with zeale to apprehend what is (and an honest mind to perform) thy Duty.

FAREWELL



THE
PREAMBLE
TO THE
READER.

SO great a Blessing is that of Peace, and so universally necessary for the preservation of Man and humane Society, that in all Ages there hath speciall care been taken for the making of good, and wholesome Lawes for the conservation thereof; and from time to time power given by all Princes and Common-Weals to establish the same, there being nothing under Heaven (except the inward peace of Conscience) to be compared unto, nor more to be
B desired

The Preamble.

desired then it; a thing very often in the holy Scripture both commended and commanded, and a blessing promised to the Makers & Keepers thereof: And therefore to this great Blessing the Kings of this Nation have Constituted persons of greatest Integrity, Fidelity, Wisdom, and Trust, by Commissions to be Conservators thereof, which we do call Justices of the Peace, as if their chiefe work and businesse were to keep and maintain the same; Without which no mans life can bee comfortable unto him; nor can any man promise to himselfe, or hope for security without it; either to his Person or his Estate, both being exposed to the Lust and Rapine of others who have power to violate the same; whereof in these times we have had too lamentable Experience. And therefore the breach of it is specially enquireable, not onely at the Assizes, and generall quarter Sessions in every County, but the Justices of the Peace in their severall Limits, have by their Commissions power to call privie Sessions, as well to prevent as to remove all force which tends to the disturbance thereof; and in every Court-leet held, either by Grant or prescription, the Steward hath power to enquire of all or most offences against the same; and divers other Officers and Magistrates are enabled to bind unruly men to the Peace and good Behaviour,

The Preamble.

view for the security of every particular mans person who fearing violence either to his person, or Estate, doth upon just cause desire it: and thereof every man that stands in feare of either, upon his addresse to the Justices of the Peace, or other Officers may have reliefe, and hath liberty either at the Assizes or quarter Sessions, to indite such Offenders as shall do, or attempt to do any thing contrary to such Lawes as are made for that purpose; concerning which the regular Proceedings are, as hereafter shall be declared.

And because the proceedings for Offences against the Peace, for the most part are by Indictments, and upon such Proceedings as do in processe of time terminate the matters in agitation; I have thought it most methodicall to set down so many of them in the English Tongue as are likely to be made use of; beginning with the most Capitall Offences, as high Treason, petty Treason &c. and from thence going on to the Felonies of the highest sort; viz. Murthers, Rapes, Sacriledges, Robbery by the high way, and other Felonies which have not the benefit of Clergy; and from them descend to Felonies of a lesser size and sort: and last of all for Trespasses and other Misdemeanours; which done, I shall observe some of the Proceedings upon those Indictments in the Crown Office,

The Preamble.

Goale Delivery, and Sessions of the Peace, to the end, that the unlearned in the Lawes may plainly see both the matter, and form of all such Indictments and business, concerning all, or most Offences against the Peace, and may be acquainted with the manner of proceedings: which I desire to make obvious to the understanding of such as could not attain thereunto, while the Indictments and Proceſs were in the Latine Tongue, which the Country-man (for whose benefit this Work was principally undertaken) could not attaine unto, and by knowing what is necessary in and to every Indictment, which are, the Person who, the time when, the place where, the thing taken, the Owner thereof, the manner how, and the intent, comprised in the word Felony; as Mr. West in the second part of his Symboleography hath well expressed; he may finde what is wanting in any such Indictment as he may have occasion to see into: or whether the proceedings concerning the same have been regular; which done, we will shew the way the Upper-bench proceedeth in Criminall Causes, and also the proceedings upon Indictments at the Goale-delivery, and Quarter Sessions, with such other things as be incident thereunto; as the Warrants of the Justices of Peace upon severall occasions, the formes of Proceſs against Felons, or other persons

The Preamble.

Jones Indicted, Recognizances, Certioraries, Traverses, the Oathes of Constables, and such other particulars as shall fall within the scope and intencion of this Work, whereto, as an Appendix shall be shew'd the Duties of Churchwardens, &c.

The Judges Itinerant have by their Commission power not only to enquire, but also to heare and determine all manner of Offences contra pacem, and may therefore enquire of, heare and determine all manner of Treasons, which the Justices of Peace cannot do.

But for the most part, when any man is Indicted for high Treason against the person of the King, and such other Offences as are declared to be Treason, by the Statute of 25. Edw. 3. the Indictment is in the Upper-bench, and the tryall by Commission under the great Seal of England, to some persons of quality, commonly of the privie Councell, assisted by some of the Judges of the one or the other Bench; the Kings, or Common-wealths Councell being ordinarily employed to give the Evidence, and manage the business.

THE HISTORY OF

THE CITY OF BOSTON
FROM THE FIRST SETTLEMENT
TO THE PRESENT TIME
IN TWO VOLUMES
BY NATHANIEL BENTLEY
OF THE BOSTON BAR
VOL. I
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THE LAY-MAN'S LAWYER.



HE Scope and Designe of the Author being to Treat of matters as concerne the Peace only, he did in the former Impression collect such Forms of Indictments as concerned the breach thereof; which before he set downe, he then thought, and yet doth, it would be more methodicall to declare the Subject matter of those Indictments, beginning with the most capitall Offences, and so to the lowest of them in order, shewing the nature of them severally, with some Observations thereof, and Judgements thereupon. And first of *High Treason*.

The severall species whereof are declared by the Statute of 25. Ed. 3. which being made for the good and safety of the people, was called *Parliamentum benedictum*, and was ratified by a Statute 1 H. 4. Ca. 10 & 1 Ed. 6. Ca. 12. & 1 Mar. Ca. 1.

Inter leges Canuti, Treasons were reckoned among those wickednesses which by Humane Law were unexpiable or unpardonable.

And although in times past, the Clergy held them

themselves priviledged from answering in the highest Criminal Causes, yet this Statute extends to all persons men and women, Ecclesiasticall and Civill.

Yet if a man not *compos mentis*, or an Infant within the age of discretion (and therefore not a man) do commit Treason, they are not within this Act: And therefore if a man commit Treason or Felony, and confesseth the same, or otherwise be thereof convict, if afterwards he become not of sound memory, but *patitur exilium mentis*, he shall not be called to answer; or if after Judgement he become not of sound memory, he shall not be executed, because it cannot be an example to others, which was the intent of the Law, *Co. pl. Cor. Ca. 1.*

Yet the ancient Law was, that if a man had offered to kill the King, it was held for Treason, as appears by King *Alfreds* Law before the Conquest, in *Lib. 4. Beverleys Case.*

Clipping, washing, and filing of money of this Realm was not high Treason, till it was so declared by a Statute 5 *Elix. Ca. 11.* and 18. *Elix. viz. That if any person for wicked lucre or gain sake, shall by any Art wayes, or means whatsoever, impaire, diminish, falsifie, scale, or lighten the Kings Coyne, it is high Treason.*

And forging or counterfeiting of forraign money not currant within this Realm, is misprision of Treason, and the Offender shall forfeit as for concealement of high Treason. And the Statutes 1 *Ma. & 5 & 18 Elix.* before mentioned, do extend to forraign Coyne currant within this Kingdome, and such Judgement as was at the common Law, before the Statute of 25 *Ed. 3.* either in case of high Treason, or petit Treason shall be given.

The tryall against an Alien that lived under the protection

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protection of the King (amity being between both Kings) for high Treason, shall by force of the Act of 1 & 2 Ph. and Ma. be tryed according to the due course of common Law, and not *per medietatem lingue*, as he shall in case of petit Treason, Murther, and Felony, if he prayeth it.

When Babington and other Traytors his Complices (being in all fourteen) were attainted for conspiring the death of Queen Elizabeth; This Law against Traytors was executed according to the letter thereof, upon those seven who were executed the first day, but her Majesty was graciously pleased to moderate the execution upon the other seven, so that they hang'd till they were dead.

The Judgment given in case of high Treason is,

That the person attainted shall be drawn to the Gallows at T. and there to be hanged by the neck, and cast alive upon the ground, and his bowels taken out of his body, and while he is living burned in the fire, his head cut off, his body quartered, and his head and quarters put where the King shall appoint.

In which Judgment is implied forfeiture of all his Mannors, Lands, Tenements, and Hereditaments in Fee-simple, and Fee-taile, his wife to lose her Dower, his Children become base and ignoble, and his blood so stained and corrupted that they cannot inherit to him or any other, and forfeit all his Goods and Chattels, &c.

Petit

Petit Treason.

FOR a Servant to kill his Master, was petite Treason by the common Law, 12 lib. ass. pa 20. and 21 Ed. 3: Ca. 17. or if a Servant kill his Masters wife it is petit Treason, for he is a Servant to them both, 19 H.6. For a woman to kill her Husband it was petit Treason by the common Law, 15. Ed. 2. Coron. 183. And the Law is, if a Servant after he is out of his Service kill his Master it is petit Treason, so that he did it of malice premeditated during the time that he was in his service.

If the wife procure one to kill her Husband, and he doth it accordingly, in this case the wife being absent is but accessory, and shall be hanged and not burnt, because the accessory cannot be guilty of petit Treason, where the principall is but guilty of Murther; But if he that did the Murther had been a Servant of her Husband, it had been petit Treason in them both, and the wife should have been burnt; and so is the judgment at this day.

In time past, *Voluntas reputabatur pro facto*, and thereupon a mans wife who went a way with her Adulterer, compassed the death of her Husband, they assaulted him and strook him with Weapons that he fell down as dead, yet recovered; the man and woman were Indicted and Arraigned, and the speciall matter being found, the man was adjudged to be hanged, and the woman to be burnt, 15 Ed. 2, lit. Cor. 383.

And a Boy attempting to cut his Masters throat in his bed, and thinking he had done it, fled, but was apprehended; and this being specially found (though the man dyed not of the wound) the Boy

was

was adjudged to be hanged, because in both these cases there was an overt Act, which was more then a bare plotting or compassing.

By the Statute of 5. Ed. 6. Ca. 11. no man is to be indicted of high Treason, or petit Treason, but by the Testimony of two witnesses; and 5 Eliz. Ca. 12. accused by sufficient Testimony.

Nor ought any man outlawed to serve upon any Inquests, and therefore all Indictments found by any such shall be void and null, because they be not *probi & legales homines*, good and lawfull men, *Stam. pl. Cor. fol. 87.*

If a man be indicted of high Treason he may plead a forraign Plea, as he might do at the common Law, but not in cases of petit Treason, Murder, or Felony, for there it shall be tried where the Indictment is taken.

And the Iudgment in petit Treason is, that he shall be drawn to the place of Execution, and there to be hanged by the neck till he be dead.

But a woman is to have Iudgment to be drawn and burnt, both in case of petit Treason, and high Treason, and not to be beheaded, or hanged.

And it is a Maxime in Law, that Execution must be according to the Iudgement, though there be some examples to the contrary; as the Lord *Hungerford*, 32 H. 8. who notwithstanding his judgment to be hanged, was beheaded, and so was the Duke of *Somerset*, 5 Ed. 6. But the Lord *Dacre* 33 H. 8. and the Lord *Stourton* 3. & 4 P. & M. were hanged according to the Iudgement.

And in case of Felony or Treason, if any person be outlawed, the Judgment upon the Exigent at the set County upon the default of the party is, Therefore by the Iudgement of the Coroner he is outlawed; which Writ being duly returned by the Sheriff,

Sheriff, the party outlawed shall have the same corporall punishment, and shall forfeit as much as if he had appeared, and Iudgment had been given against him in case of Felony or Treason respectively. But if the proceeding therein be erroneous, and upon his appearance, upon the *Cap. m. legum*, if it appeare so to the Court they ought not to award Execution against him.

Misprision of Treason.

BY the common Law concealment of high Treason was Treason, 3 H. 5. in the Lord Scroppe's case.

But by the Statute of 1 & 2 of Ph. and Mar. it was enacted, that concealing or keeping secret of high Treason, be deemed and taken only misprision of Treason; and the Offender therein to forfeit and suffer, as in case of misprision.

The Iudgement in misprision of high Treason is by the common Law, that the Offender shall for his concealment forfeit all his goods, and the profits of his Lands during his life, and suffer imprisonment during his life. *Stamp. pl. Cor. fol. 38. and 1 P. and 2 M. ca. 10.*

Concealment, and not discovery of Treason is misprision of Treason; and concealment, and not discovery of Felony is misprision of Felony, whether the Treason or Felony be by the Statute, or common Law.

A man that is present when another is slain, and doth not apprehend the Slayer, it is a misprision, and shall be fined and imprisoned for the same omission, 8. Ed. 2. Cor. 395.

To draw a Weapon in *Westminster* Hall upon any Judge or Justice (though he strikes him not) sitting the

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the Courts, is a misprision, for which he shall lose his right hand, forfeit his lands and goods, and suffer perpetual imprisonment, *West. 1. ca. 33.*

Or 16. in the presence of the Iudges sitting in Westminster Hall, or elsewhere, or before the Iustices of Assise, or Oyer and Terminer, any strike a Iuror, he shall have the like punishment, *inter leges Almaric, cap. 34.*

Or if any strike in the Kings Pallace where he resideth, he shall lose his right hand, and be perpetually imprisoned, if he draw blood otherwise not, *3. H. cap. 12.*

By which it appears, that striking in Westminster Hall, the Courts sitting, &c. hath greater punishment then for meer striking (without drawing blood) in the Kings house.

And it is a Rule, that every Treason and Felony doth comprehend misprision of either.

All persons convicted of Offences, for which they cannot have the benefit of their Clergy, or such as might have it and cannot read, their Iudgement is to go to the place from whence they came (*viz* The Prison) and from thence to the place of Execution, and there to be hanged by the neck till they be dead.

Of Conjuration, Witchcraft, Sorcery, and Inchantment.

A Conjurer is he, that by holy and powerfull names of Almighty God invokes and conjures the divell to consult with him, or to do some Act.

A Witch is a person that hath conference with the divell to consult with him, or to do some Act.

An Inchanter is he, or she that with Verses or Songs doth adjure the divell.

A Sorcerer is so called, because he useth Lots in these diuellish Inchantments.

The punishment of this Offence before the Conquest was burning, and since that time, these Offences being adjudged Idolatry and Hereticall, was also such.

But by the Statute 1 *Jacobi*, it was enacted, if any person shall use, practise, or exercise any Invocation or Conjurat[i]on with any evill or wicked Spirit,

Or shall consult, covenant with, entertain, imploy, feed, or reward any evill or wicked Spirit, or for any intent or purpose.

Or take up any dead man, woman, and childe, out of his, or their grave, or any other place where the body resteth, or the skin, bone, or any part of a dead person, to be imployed or used in any manner of Witchcraft, Sorcery, Charm, or Inchantment.

Or shall use, exercise, or practise any Witchcraft, Inchantment, Charm, or Sorcery, whereby any person shall be killed, destroyed, wasted, consumed, pined, or lamed in his, or their body, or any part thereof.

That then every such Offendor, or Offenders, their Aiders, Abettors, and Counsellours being of any of the said Offences duly and lawfully convicted, shall suffer paines of death, as a Felon, or Felons, and shall lose the benefit of the Clergy and Sanctuary.

Of Murder.

Definition.

Murder is where a man of sound memory, and of the age of discretion, unlawfully killeth within

within any County of the Realme, any reasonable Creature in *rerum natura*, under the Kings Peace, with malice forethought, either expressed by the party, or implied by Law, so as the party wounded or hurt, &c. dye of the wound or hurt, within a year and a day after the same.— *Co. cap. 8.*

And under the title of killing, are understood death by poysoning, any Weapon sharp or blunt, Gun, Crosbow, Crustring, Bruising, Smothering, Suffocating, strangling, drowning, burning, burying, smothering, throwing down, inciting a Dogge, or Beare, to bite or hurt, whereof death ensueth, or laying a sick man in the cold.— *ib.*

Of all which severall sorts of murder, poysoning was held the most detestable, in so much as by a Statute 22. H. 8. ca. 9. it was made high Treason, and for the same the offender should be boiled to death in hot water. And some were executed accordingly. But the Act being held too severe, was repealed: 1 Ed. 6. ca. 12. & 1. M. ca. 1.

Under the notion of reasonable Creature is comprehended, Man, Woman, Child, Subject borne, or Alien, Christian, Jew, Heathen, Turk or Infidell being under the Kings Peace.

Malice prepenſed, is when one compasseth to kill, wound, or beat another, and doth it *Sedato animo*, which is so odious in Law, as though it be intended against one, it shall be extended against another; so that if one strike one when he intended to strike another, it shall be held Felony to him. *Bracton lib 3. fol. 155.*

For which the Indictment is, that he shall be hanged, and shall not have the benefit of the Clergy.

Of Homicide, and the several kinds thereof.

F*elo de se*, is where a man or woman, being of sound memory, and of the age of discretion killeth himself, which being lawfully found by the Oath of twelve men, all the goods of the person so offending are forfeited, but not his Lands, for that no man can forfeit his Lands without an attainder by course of Law, which can not be, by *Felo de se*.

For cutting out of Tongues, and putting out of Eyes.

BY the Statute of 5. H. 4. cap. 5. It was enacted. If any man do cut out the tongue, or put out the eyes of any of the Kings Leiges of malice prepensed, it is Felony, which Statute was made for that before this Statute, when one had beaten, wounded, maymed or robbed, &c. the Offenders, to the end, the party grieved might not be able to accuse them, did cut out their tongues, or put out their eyes, pretending the same to be no Felony, and therefore it was ordained and established to be Felony by this Act.

For Burglary.

A Burglar is by the common Law a Felon, that in the night breaketh or entreth into a Mansion house of another, with intent to kill some reasonable Creature, or to commit some other Felony within the same, whether his Felonious intent be executed or not: *inter leges Edm. cap 6 fol. 26.* and by the Law of the twelve Tables. — *Si nocte furtum factum sit, jure Casus est.* But

But if a mansion house stand open, and a Theefe enter into the house with a purpose to steale, though in Law this be a breaking of the house, yet it is no Burglary, because no actuall breaking of the house. But if a Theefe break a Glass-window, and with a Hook, draweth out some of the owners Goods, it is Burglary, and under the title of mansion House are contained all the outset buildings, Barnes, Stables, &c:

For which offences, and for breaking of a house by day, and thence taking away money or goods, to the value of five shillings, though no person be therein shall suffer death, as in case of Burglary, 39 Eliz. ca. 15.

For burning of houses:

Burning is a Felony at the Common Law, committed by any that maliciously and voluntarily in the night, or day burneth the house of another. 3. H. 7.

And this extendeth to the burning of a Barne, (though no parcell of the Mansion house) if there be Corne or Hay within it.

Of Robbery.

Robbery is a Felony by the Common Law, committed by a violent assault upon the person of another, by putting him in feare, and taking from his Person his money, or any other of his Goods of any value whatsoever, *inter leges Cannit* cap. 61. fol. 128.

*Of Hunting in the night in any Forrest,
Parke, or Warren.*

BY the Statute of 1. H. 7. It was enacted, That if any person or persons hereafter be convict of hunting in any Forrest, Parke, or Warren with painted faces, Visors, or otherwise disguised, to the intent they should not be known, or of any unlawfull hunting in the night, that then the same person or persons so convict to have like punishment, as he, or they should have, if he, or they were convict of Felony.

*Felony in wandring Souldiers, and
Mariners.*

BY the Statute of 39. Eliz. All idle and wandring Souldiers or Mariners, or idle persons, wandring as Souldiers or Mariners shall be reputed Felons and suffer as in case of Felony.

And if any such wandring Souldier or Mariner, or other idle person wandring as Souldier or Mariner shall forge or counterfeit any such testimoniall, as by this Act is directed, he is by this Act a Felon.

Or if he shall have with him, or them any such testimoniall forged or counterfeited, knowing the same to be such, he is also by this Act a Felon, and shall not have the benefit of Clergy, and the Justices of Assise, Justices of Goale Delivery, and Justices of Peace have power by this Act to hear and determine the said Felonies.

Of Felony for any having a Plague sore upon him, and goeth abroad.

By the Statute of 1. Jac: cap. 31. It was enacted that if any person infected with the Plague commanded (by such persons as are appointed by the Act) to keep house, shall contrary to such commandement willfully and contemptuously go abroad, and shall converse in company, having any infectious sore upon him uncured, such person shall be adjudged a Felon, but with this Proviso; That no attainder of Felony by vertue of this Act shall extend to any Corruption of blood, or forfeiture of Goods, Chattells, Lands, Tenements or Hereditaments,

Of Felony in dangerous Rogues,

If any dangerous Rogue that was banisht the Realme, or adjudged perpetually to the Gallies, have returned into the Realme without lawfull Licence or Warrant, it is Felony, the same to be tried where the offender is apprehended — 39 Eliz: ca. 6. 1. Jac. 25.

But the Offendor may have the benefit of his Clergy.

If any Rogue after he hath beene branded in open Sessions with a Romane R. upon the left shoulder, or sent to the place of his dwelling, where he had last dwelt by the space of a yeare, or the place of his birth to be placed in labour, have offended againe in begging or wandring contrary to the said Statutes, it is Felony without Clergy.

By the Statute of 8. Eliz: no manner of person

was to send or deliver, &c. into any Ship or boat, any Rams, Sheep, or Lambs, or any other Sheep alive to be conveyed out of this Realme of England, Wales, or Ireland, upon paine, that he and all his Abbettors, &c. for their first offence, shall forfeit all his goods, and suffer imprisonment for one whole yeare without Bayle or Mayneprise, and at the yeares end in some Market Town in the fullness of the Market, have his left hand cut off, and all such offenders be adjudged Felons. But this Act shall not extend to corruption of blood or loss of Dower; and the offender may have the benefit of his Clergy, in case of the cutting off his hand, as in the case of Felony, saith Sir Ed Cooke, for which he vouches *Stamf. Pleas Crown fol. 37. 6.* where I finde nothing to that purpose, and must therefore take his word, that the Law is so.

Of Felony in Servants that imbezell their Masters goods committed to their trust, above 40.s.

EVERY Servant to whom any Caskets, Jewells, Money or Goods of his Master or Mistress shall be delivered to keep. That if any such servant withdraw himselfe from his Master or Mistress, and go away with the said Caskets, Jewells, Money, &c. to the intent to steale the same contrary to trust, &c. Or else being in service of his said Master or Mistress, without their assent shall imbezill the same, or any part thereof, or otherwise convert the same to his own use, with purpose to steale it, the same being of the value of fortie shillings or above, shall be adjudged Felony. 21. H. 8. ca. 1. Ed. 6. ca. 12. 5. Eliz. ca. 10. but the offender may have his Clergy.

Of Larceny by the Common Law,

It is the fraudulent taking of an other mans moveable Goods, with an intent to steal the same against the will of the owner. *Bratton lib. 3. fol. 150. & Fleta lib. 1. ca. 36.*

Or, according to Sir Ed. Coke, it is the felonious and fraudulent taking or carrying away of the meer personall estate of another, neither from the person, nor by night in the house of the owner, which a Mad man that is not *compos mentis*, or an Infant under the age of discretion cannot commit; nor a feme Covert, if it be done by the coercion of her Husband; otherwise she may, and her Husband may be accessory to it, but the wife cannot be accessory to her Husband, though she know the Larceny.

There is grand Larceny, and Petit Larceny, if the Goods stole be of above twelve pence in value, then it is Grand Larceny, if under that value then it is Petit Larceny, for which the Offender, shall forfeit all his Goods, and suffer some corporal punishment, as whipping, &c. *Mirror. cap. 4. sect. de crime de Robbery.* and Sir Ed. Coke saith; it is a rule in Law, that if no Felony can be committed of any thing that is *Ferum natura*, and of age being reclaimed or made tame, that then no Felony can be of the young in the nest, kennell, or den.

And yet of some things that be *Fere natura*, being reclaimed, Felony may be committed, in respect of their noble and generous nature and courage; As all kind of Falcons, and other Hawks, if the party that steales them know they be reclaimed, *Mirror ca. 1. sect 10.* And so of Fishes in a trunk or Pond.

And so if Deer, wild-Bore, Conies, Craines Pheasants, which serve for the food of man be made tame, the stealing of them is Larceny.

Of Maymes.

A Mayme is properly said to be, when any Member of a mans body is taken away, whereby he is become lesse able to fight or combare, as the eye, the hand, the foot or the brusing of the head, or the fore teeth. *Briton fol. 48.* Iustice Seton saith, That every finger of the hand shall be said to be a mayme, if it be cut off, 28 *Ed.3* But the cutting off an Eare, shall not be adjudged a mayme, yet to knock out his Teeth is a mayme, because with them he may defend himselfe in Battell,

And *Bracton* saith, that a mayme may be said to be when any part of a mans Body is made unable to fight; as if the bones be broken, out of the head, or if a bone be broken, or a foot, or a hand, or a finger, or the joynt of the foot, or any member be cut off, or by reason of any blow the sinews be contracted, or the fingers made crooked, or his eye pulled out, or any thing in a mans body, whereby he is made lesse able to defend himself. *Bracton* cited by *Stamford Cl. Cr. ca. 41. fol. 386*, Or to cut of the genitalls of a man. *Cloze Rolls 13. H. 3. Camb Britton. 59. 3.*

Premunire.

IT is so called of the words in the Writ, The King to the Sheriffe &c. *quod premunire fac.* *A. Bec. Nat. B. fol. 143.* And was made against such as did draw the Kings subjects, to answer things, the Conuifance whereof pertained to the Kings Court 2. of judgments given in the Court. And thirdly that after judgments given in the Kings Courts of Common Law of matters determinable thereby: and such as did pursue in the Court of Rome, or else where any thing which touched the King, against

gainst him, his Crown and Regality of his Realm,
they, their notaries, procurators &c. shall be out of
the Kings protection, 16 R:2.ca.5.& 27.Ed:3

Of Prophecies

ELIX. A statute was made against Prophecie
by writing, singing, or other open speech or
deed, by the occasion of any Armes, Fields, Beasts,
Badges, or other like things accustomed in Armes,
Cognizances, or Signets; or by reason of any
time, yeer or day, to the intent thereby to make
any Rebellion, Insurrection, Dissention, losse of
life, or disturbance within this Realm or other
the Queens Dominions. For the first offence im-
prisonment of his body by the space of a yeer, with-
out baile, and 10 li. to the Queen and the Infor-
mer; and for the second offence imprisonment
during his life without baile, and to forfeit to the
Queen all his Goods, and Chattels reall and perso-
nall; so that he be impeached or accused within
six months next ensuing the offence by him done.

Of Approvers.

AN Approver is a person indicted of Treason
or Felony, in Prison for, the same, and not
disabled to accuse, He may upon his arraignment
before any Plea pleaded, and before competent
Judges confesse the Indictment, and take a corpo-
rall oath to reveale all Treasons and Felonies that
he knowes, and pray a Coroner before whom he is
to enter his Appeale or Accusation, against all that
are partakers of his offence or of his society, in
committing of Treason or Felony contained in the
Indictment, those partners being within the Realm;
And if upon his Appeale all those partners be con-
victed, the King in point of Iustice is to pardon
him.

him. But it is in the discretion of the Court either to suffer him to be an Approver, or after his Approvement to respite Judgment and Execution, untill he hath convicted all his partners 9 H. 5. Cor. 440. 1 H. 5. Cor. 441.

Nor any man attainted of Treason or Felony, because he is out of the Law, or if he be indicted and out of prison, 11 Aff. pl. 17.

Nor Women, Infants, Idiots, Lepers, Professors in order of Religion, or Clerk, or persons attainted of Felony, or *non compos mentis* — *Mirror Ca. sect. 13*

And Stamford saith, nor men above the age of seventy yeers, or maimed, because some of them cannot take an Oath, and none of them can wage battell, *Stam. pl. Cor. pa. 140.*

Of false Tokens and Letters in other mens names.

ANy person that shall deceitfully obtain into his hands any money, Goods Jewels, &c. of any person or persons by collour or means of any false or privie Tokens or counterfeit Letters made in other mens names, shall suffer such Correction by punishment of his body, setting upon the Pillory or other corporall pain (except the paines of death) as shall be to him adjudged by such before whom he shall be convicted, with a saving to the party grieved by such deceit; such remedy by way of Action or otherwise as he might have had by the common Law, 33. H. 8. ca. 1.

Of Theft-boot.

THeft-boot is when the Owner not only knowes of the Felony, but taketh of the Theefe his Goods again, or amends for the same to favour or maintaine

maintain, that is, not to prosecute him, to the intent he may escape. But in that case if he receive the Theefe himselfe, and aid and maintain him in his Felony, then he is accessary to the Felony. But if a man take his Goods again that were stolen, it is no offence, unless he favout the Theefe.

So that there is a difference when a man receives the Theft, and when he receives the Theefe.

Of Conspiracy.

BY the Statute 34. Ed. 1. *Conspiracy* is said to be an agreement of such as confederate, or bind themselves by Oath, Covenant, or other Alliance, that every of them shall beare and aide the other falsly and malitiously to indict, or falsly to move or maintaine pleas, and such as cause children within age to appeale men of Felony whereby they are imprisoned and sore grieved, and such as maintain men in the Countrey with Liveries and Fees to maintaine their malicious enterprises, and this extendeth as well to takers as givers; also Stewards and Bailiffs of great Lords, who by their Office and Power undertake to beare and maintaine quarrels or debates, that concerne other parties, then such as concerne the estates of their Lords, or themselves
4. Ed. 3. ca. 11

And this Word *Conspiracy* in a more speciall signification, is a Consultation and Agreement between two or more, to appeale or indict an Innocent falsely and maliciously of Felony, whom accordingly they cause to be indicted or appealed, and afterwards the party is lawfully acquitted by the Verdict of twelve men, 22 of Ed. and *Magna Charta pat. fol. 111.* for which the party grieved hath two remedies. First by a Writ of Conspiracy, by which he shall recover Damages. Secondly, by Indictment

Indictment, upon which Indictment if the Conspirators be convicted, they shall lose the freedom of the Law, they shall not be put upon any Jury of Assise, or in any other Testimony of truth, their Houses, Lands and Goods shall be seised into the Kings hands, and their Houses and Lands estrepped and wasted, their Trees rooted up and arased, and their bodies imprisoned, for that they sought by malice, falsehood, and perjury, to attain and overthrow the Innocent, 24. *Ed. 3. ca. 43.*

And such persons so convicted were not mainpernable, 27. *lib. Assis pa, 12.*

Of Bribery.

Bribery is a great mis-prison, when any man in Judiciall place takes any Fee, Pension, Robe or Livery, Gift, Reward, or Brocage of any person that hath to do before him; for doing his Office: but of the King only, unless it be of meat and drink, and that of small value upon divers and grievous punishments. *Fortescue ca. 52,* which punishment extends only to imprisonment and loss of liberty.

But it is neither Treason nor Felony, but a mis-prison, for that it is accompanied with perjury.

Of Monomachia, or single Combates.

These Duels have been forbidden by many Laws, and if either party be killed, if it be not wilfull Murther being done in cold blood, yet it is Manslaughter, for which the Man-slayer shall forfeit his life, lose his Lands and Goods: And though no death or blood ensue, yet it is a great breach of the Peace, and is to be punished by Fine and Imprisonment, and both parties to finde sureties for the good behaviour; for that being an asray
in

in terrour of the Kings Subjects, it is *contra pacem*, and in respect of the intrenchment upon the Royall Authority for revenge, it is against the Crown and dignity, 10. Ed. 3. Rot. 87. and these Duels have been usually punished in the Star. Chamber.

Against going or riding Armed.

BY the Statute of 2 Ed. 3. ca. 3. It was enacted that no man of what condition soever (except the Kings servants in his presence, and executing the Kings Commandment in their Office) be so hardy as to come before the Kings Justices or other his Ministers doing their Office with force and arms, nor bring forth in affray to the people, nor go, nor ride armed by night or by day; upon pain to forfeit their Armour to the King, and their bodies to prison at the Kings pleasure, and to make Fine and Ransome to the King. See 2 Ed. 3. cap. 3.

And by the Statute of 11. H. 7. If any by mutual consent do use Iusts or Turnaments, or to play with Sword and Buckler, or any other deeds of Armes, and one killeth the other, it is Felony See 11. H. 7. fol. 23.

Of Perjury and Subornation.

PERjury is a Crime committed when a lawfull Oath is ministred by any that hath authority to any person in any Iudiciall proceeding, who sweareth absolutely and falsely in a matter materiall to the issue or or cause in Question, by their own Act, or the Subornation of others. See 4. Co. pl. Cor. p. 164. which offence was punishable at the common Law, either by indictment, or by information, 10. Jac. in Cam. Stellat. And by this definition of Perjury it appeareth, that the Oath must be given by such as have Authority to minister it. If it must
be

be in judicall proceeding, the Oath must be absolute and false, and materiall to the issue or cause in question, by the own Act of the swearer, or by subornation of other, or else it is no perjury.

Of forging of Deeds.

BY the Statute of 5. *Eliz.* made concerning forging of Deeds, Charter, or Writing sealed, Court-roll, or Will, &c. the party for the first offence was to be fined, and the second offence was Felony; See *Eliz. cap. 14.*

Of Libells, and Libellers.

A Maker or Publisher of Libells committeth a publike offence, for which he may be indicted at the common Law, whereof there be Presidents, 10 *Ed. 3.* in the Kings Bench, *Rot. 92.* and 18. *Ed 3. Rot. 191.*

Of Riots, Routs, and unlawfull Assemblies.

IT is properly called a Riot when three or more do any unlawfull Act, as to beat a man, or to hunt in his Parke, Chase or Warren, or to enter or take Possession of another mans Lands, or cut, or destroy his Corne, Grass, or other profit.

Rout is properly when any unlawfull Act is done for their own or common quarrell. As when the Commoners breake down Hedges, or Pales, or cast down Ditches, &c.

An unlawfull Assembly is when three or more assemble themselves together, to commit a Riot or Rout and do it not, *Co. pol. Co. fol. 176.* for any of which they may be indicted.

Of malicious striking With any Weapon in Church, or Church-Yard.

THe Offender being convict by the Oath of twelve men, or by his own confession, or by two lawfull Witnesses before Iustices of Assise, Iustices of Oyer and Terminer, or Iustices of Peace at their Sessions must lose one of his Eares, and if he have no Eares, to be marked in the Cheek with a hot Iron with the letter F. and *ipso facto excommunicat.* 5. Ed. 6. ca. 4.

Against Fugitives, or such as go beyond the Seas without license, and return not upon command.

FOr any such Subject that shall depart this Realm to serve any private State or Potentate, not having before his going taken the Oath mentioned in that Act: and for any Gentleman or person of higher degree, or any person which hath borne, or shall beare any Office or Place of Captain, Lieutenant, &c. before he be bound with two Sureties, as in that Act is prescribed, is adjudged Felony. But upon such attainder no forfeiture of Dower or corruption of Blood shall ensue, 3. Jac. ca. 5.

Of Brothell Houses.

THe Keepers of any such House is punishable by Indictment at the common Law by Fine and Imprisonment, as being the cause of many mischiefs, and a common nuisance, 11. H. 6. ca. 1.

Judg^r

Judgement in case of petit Larceny.

IN and since the Reign of Ed. 3. no person lost any member for petit Larceny, but were sometimes punished by imprisonment, and sometimes by other Penance, as whipping, &c. But if the Delinquent flyeth for petit Larceny, and so be found by the Jury, he so forfeiteth his goods.

In a Premunire at the suit of the King.

IF the Delinquent be in prison, that the said A. be out of the protection of the King, and shall forfeit his Lands, and Tenements, Goods, and Chattels to the King, and remain in prison during the Kings pleasure, 25. Ed. 3. Ca. 22. and if he be not in prison, that he be out of the protection of the King, forfeit his Lands, &c. and be taken.

In Theft-boot.

THat the Offendor be fined, and imprisoned till he hath paid his fine.

Death of a man per infortunium.

OF this mischance there is no express Judgment, but the Offendor is to sue out his pardon of course, but by the Law he shall forfeit all his Goods and Chattels, Debts and Duties, 14. H. 8. Ca. 5.

Death of a man, Se defendendo.

IN this case the Law hath given a Judgment that he shall forfeit all his Goods and Chattels, Debts and Duties, and sue out his pardon of course: And in this case the Jury ought to finde the matter specially, that the Court may judge whether in Law it be Se defendendo or not, Stamf. pl. Cor. fol. 15.

Of the death of a man who offereth to Rob,
&c.

If it be found by Verdict (that the party Indicted or
Appealed for the death of A.) A. attempted to have
Robbed or Murthered him, in or nigh any common high
way, &c. or in his Mansion or dwelling House, or for
killing him which attempteth Burglary in the night. The
Judgment upon such a Verdict shall be, that he shall be
acquitted paying his Fees, and shall forfeit nothing,
24. H. 8.

Of seizure of Goods, &c. for Offences, &c.
before Conviction.

Regularly the Goods of any Delinquent cannot
be taken and seiled to the Kings use, before the
same be forfeited.

Nor can they be inventoried, nor the Town char-
ged therewith, before the Owner be convicted of
Record, 25. Ed. 3. ca. 14.

Prisoners imprisoned (saith Bracton) before they
be convicted ought not to be disseised of their lands,
nor of any of their goods to be dispoiled, but while
they be in prison ought to be maintained of their
own Estate, untill they shall be delivered or con-
demned by iudgment, because as he saith, fol. 136.
before conviction he forfeits nothing. See Bract.
lib. 3. fol. 123.

An Indictment for High Treason against the
person of Q. Elizabeth.

The Jurors for our Sovereign Lady the Queen,
do present, That william Allein late of, &c. And
Edmond

Edmond Campion late of, &c. *N. M.* and others; false Traytors against the most illustrious and most excellent Princess, our Sovereigne Lady *Elizabeth* by the Grace of God of *England, France, and Ireland,* Defender of the Faith, &c. Their Supream and naturall Lady, not having the feare of God in their hearts, nor weighing their due allegiance, but seduced by a divellish instigation, their hearty love, and true, and due obedience, which true and faithfull Subjects of the said Queen, towards her, do, and of right are bound to bear, intending altogether to withdraw, blot out, and exstinguish; the last day of *March* in the two and twentieth year of the reign of the said Queen, at *Rome* in *Italy* in the parts beyond the Seas, and the last day of *Aprill*, in the two and twentieth year of the said Queen at *Rhemes* in *Campania* in the parts beyond the Seas, and at divers other dayes, and times afterwards, aswell at *Rome* and *Rhemes*, as in divers other places in the parts beyond the Seas, feloniously, maliciously, and trayterously did conspire, imagine, circumvent, and compass the said Queen their Sovereigne Lady, not only from her Regall estate, title, power, and government of her Kingdome of *England*, wholly to deprive, cast out, and disinherit, but also to bring death and finall destruction, and to raise sedition in the said Kingdome of *England*, and a miserable and unhappy destruction between the Subjects of the said Queen through the whole Kingdom of *England*, and to stir up, beget, and procure and raise, and procure an Insurrection and Rebellion against the said Queen, their Sovereigne and naturall Lady, and the Government of the said Kingdome, and the true and sincere Religion of God in the same Kingdome of *England* ratified, and piously established, and at their will and pleasure, to change
and

and alter, and also the State of the whole Commonwealth of this Kingdome of *England*, in all the parts thereof well settled and ordained totally to subvert and destroy, and divers Strangers and Aliens, not being Subjects of the said Queen in hostile manner to invade this Kingdome, and to raise, levy and raise, and stir up Warre in this Kingdome against the said Queen, And to compass and bring about those most wicked and trayterous maginations, compassings, intentions and purposes of Treasons, the said *William Allein* and *Edmond Campion*, &c. the last day of *March*, in the foresaid two and twentieth year of the Reigne of the said Queen *Elizabeth*, as well at *Rhemes* aforesaid, as also at divers other places and parts beyond the Seas, among themselves feloniously and trayterously consulted, treated, or at least had speech, by what wayes or means they might bring to pass the death and finall destruction of our said Sovereign Lady the Queen, and their naturall Lady, and how they might raise and make sedition in the said Kingdom of *England*; and to that intent and purpose the foresaid *W. A.* and *Ed. C.* &c. afterwards, that is to say, the twentieth day of *May* in the two and twentieth year of the Reigne of the said Queen *Elizabeth* aforesaid; And at divers other dayes and times after and before, as well at *Rome* aforesaid; as also in divers other places and parts beyond the Seas, as well by their perswasions as by their letters, did move, excite, and encourage divers strangers, not being Subjects of the said Queen, but her enemies, in hostile manner the Kingdome of *England* to invade, and most sharpe Warre within the said Kingdome, against the said Queen to levy and make. And further, that the said *W. A.* and *Edmond Campion*, &c. the aforesaid twentieth day of *May*, in the two and

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twentieth

twentieth year aforesaid at *Rome* aforesaid; and the last day of the same Moneth of *May*, in the two and twentieth year at *Rhemes* aforesaid; and at divers other dayes, and times before, and after aswell at *Rome* and *Rhemes* as in divers other places in the parts beyond the Seas, did trayterously agree, that the said *Ed. C.* and *N. M.* should speedily hasten into *England* to move and perswade such Subjects of the said Queen of this Kingdome of *England*, as they could procure, trayterously, to aide such Strangers and Aliens as they could bring and procure to make, move, and levy Warre and Rebellion in the same Kingdome of *England*, against the said Queen their Sovereigne and naturall Lady; And the sincere Religion of God in the same Kingdome, well and piously established, at their will, trayterously to change and alter. And that the said *E. C. N. M.* and others afterwards, that is to say, the first day of *June*, in the said two and twentieth year of the said Queen, by trayterous procurement, encouragement and means aforesaid *W. A.* at *Rhemes* aforesaid, did trayterously take their Journey from *Rhemes* aforesaid towards this Kingdome of *England* trayterously to fullfill and bring to pass their Treason aforesaid, Contrary to their due Allegiance, contrary to the Peace of the said Queen, her Ctown and dignity, and in manifest contempt of the Lawes of this Realme, and contrary to the forme of divers Statutes in that Case made, and provided.

*Against One for uttering words to move
Rebellion.*

Midd. B.

THe Jurors, &c. do present that *A. B.* late of *C.* in the County aforesaid Tayler, intending and
imagining

imagining to move sedition, discord, dissention, and rebellion within the Kingdome of England, the tenth day of May in the year of our Lord God 1600. At Assen in the County aforesaid, contrary to his due allegiance and fidelity, maliciously, and of his own imagination, did speake and utter these seditious and scandalous sayings and words, viz. This Religion would not stand past two, or three years; And that there would for every English man be two Spaniards to come into England, contrary to the forme of the Statute in that case made, and provided, and against the Peace, &c.

Termine Pasche 13. Jacobi, John Owen, alias Collins was indicted in the Kings Bench for speaking these words against the King. If the King be excommunicate by the Pope it is lawfull for every man to kill him, and it is no murder; for as it is lawfull to put to death a man that is condemned by a temporal Judge, so is it lawfull to kill the King if he be excommunicated by the Pope, for that is the execution of the Law, and this of the Popes Supremacie sentence, the Pope being the greater includes the King being the lesser. The exception taken by Owen, was, that he did not speak of the King of England; but that appearing to be a very weak evasion, and the words being proved by the Mayor of Sandwich and others of good credit, he was found guilty, and had judgement of Treason against him: and Sir Ed. Cooke vouched two or three Cases, one of the Duke of Buckingham 13 H. 8. who said, If the King should arrest him of high Treason, he would stab him with his Dagger, and it was adjudged a present Treason; And the Lord Stanley temp. Hen. 7. who seeing a young man, said, If he knew him to be one of King Edwards sons he would aide him against the King; for which words (though nothing was acted) they were both beheaded. And a woman in H. 8. time,

said If the King would not take againe his wife *Queen Katherine*, he should not live a year, but dye like a dog, and it was adjudged Treason.

For counterfeiting Gold.

Midd.

TH E Jurors, &c. do present that *W. O.* late of *K.* in the County aforesaid Yeoman, — such a day and year, &c. having not God before his eyes, but being led by the Instigation of the Devill, and intending craftily, falsely, deceitfully, and trayterously to defraud and deceive the Keepers of the Liberty of *England*, Authorised by Act of Parliament, and the people of this Nation, of his own proper wrong, without any authority, or grant of the said Keepers to him given; forty peeces of false money, to the fashion and likeness of peeces of good and lawfull money of *England*, called Angels, at *H.* in the County aforesaid, of Copper, and false and mixt Mettals, falsely, feloniously, and trayterously, did make, counterfeit, coyn, and gild over, contrary to the Statute in that case made and provided, and contrary to the Peace, &c.

For uttering false peeces of Gold.

Midd.

TH E Jurors, &c. do present that *W. O.* late of *M.* in the County aforesaid, Goldsmith, — such a day and year, &c. not having God before his eyes, but seduced by the Instigation of the devill, intending falsely and deceitfully to deceive and defraud the Keepers of the Liberty of *England*, &c. and the people of this Nation, twenty peeces

of false money of Gold, of Copper, and false and mixt Metals, falsely and trayterously did make, counterfeit, coyn, and gild over to the likeness of peeces of good and lawfull money of *England*, called Crowns, without warrant or license from the said Keepers; and knowing the same peeces falsely and trayterously as aforesaid to be made, counterfeited, coyned, and gilded, to divers of the people of this Nation of *England*, falsely, deceitfully, and trayterously, did deliver, expose, and utter, contrary to the Peace, &c.

Midd. The Jurors, &c. do present that *I. N.* late of *T.* in the County aforesaid Tincker, such a day and year, &c. not having the fear of God before his eyes, but being led by the Instigation of the devill, intending falsely, craftily, deceitfully, and trayterously to deceive and defraud the Keepers of the Liberty of *England*, &c. and all the people of the Common wealth of *England*, at *M.* in the County aforesaid, ten peeces of false money, of false and mixt Mettalls, to the likeness of the Coyn and Money of another Kingdome, called Dollers, not being the proper Coyn of this Kingdome of *England*, nor the same to be currant within the Common-wealth of *England*, falsely and trayterously did counterfeit, make, and coyn, contrary to the forme of the Statute in that case made and provided, &c. and that *I. S.* late of *E.* in the County aforesaid Taylor, before the Treason aforesaid, in manner aforesaid committed; viz. Such a day and year, &c. did procure, counsell, aid, and abet the said *I. N.* the Treason aforesaid, in manner and form aforesaid to do and commit, contrary to the form of the Statute in that Case made and provided, and against the Peace, &c.

A man was indicted for counterfeiting money

proditore, and another was indicted as Accessary to him *serius cum proditionem predictam perpetrasse felonice hospitatus est*, and the Indictment was not held good, because he that was indicted as Accessary was not indicted of Treason, for they wanted the word *proditore*:

For receiving a Seminary Priest.

Surr. S.

THe Jurors, &c. do present, that whereas H. L. late of Ch. in the County of *Surrey* Clerk, otherwise called F. S. late of Ch. aforesaid, in the County aforesaid Clerk, otherwise called F. F. late of Ch. aforesaid, in the County aforesaid Clerk, was borne within this Kingdome of *England*, and after the Feast of Saint John Baptist, in the first year of the Reign of Elizabeth late Queen of *England*, and the eighteenth day of *August*, in the year of our Lord God 1550. was made and ordained a Seminary Priest by Authority deriyed and pretended from the See of *Rome*, as a false Traytor to the Keepers of the Liberty of *England*, by authority of Parliament, was, and remained within this Common-wealth of *England*, that is to say at Ch. in the said County of *Surrey*, contrary to the Lawes and Statutes of the Kingdome of *England*. Nevertheless one B. F. late of Ch. aforesaid in the County aforesaid Gentleman, the Lawes and Statutes of the said Kingdome not regarding, nor the penalty therein contained at all fearing, knowing the said H. to be a Seminary Priest, by authority deriyed and pretended from the See of *Rome*, the said eighteenth day of *Aug.* in the year of our Lord God 1560. aforesaid, at Ch. aforesaid in the County aforesaid, knowingly, willfully [and feloniously] did receive, comfort, and harbor contrary to the form of the Statute. &c. and against the Peace, &c.

For

For Saying and Hearing of Mass.

Heref.

THE Jurors, &c. do present, that A. B. late of C. in the County of H. aforesaid Clerk, the eighth day of April in the year, &c. at C. aforesaid in the County aforesaid, did voluntarily say and celebrate Mass, contrary to the forme of a Statute in Parliament, of Elizabeth late Queen of England, holden at Westminster in the County of Middlesex, in the three and twentieth year of her Reign, in that case made and provided, against the Peace, &c. And that E. F. late of G. in the County of H. aforesaid Yeoman, the said eighth day of A. was present at the time of the Celebration of the said Mass, And the same Mass so as aforesaid, then and there did voluntarily hear, against the form of the Statute aforesaid, and against the Peace, &c.

For Coyning of Money.

THE Jurors, &c. do present, that A. B. late of C. in the County aforesaid Smith, not having God before his eyes, but led by the Instigation of the divell, as a Traytor of the Keepers of the Liberties of England, &c. the . . . day of &c. in the year, &c. twenty peeces of money of false and mixed Metall, like unto the Coyn of this Common-wealth of England, called Queen Elizabeths Shillings, at C. aforesaid in the County aforesaid, falsely, feloniously, and trayterously did counterfeit, make, and coyn, against the Peace, and contrary to the Statute, &c.

Against a Jesuite, and One that received him.

THE Jurors, &c. do present, that A. B. late of C. in the County of S. born at L. in the County

of S. aforesaid, within one year last past is become a professed Jesuite, by authority from the See of Rome, trayterously at C. aforesaid in the County aforesaid, the day of in the year, &c. did come from the parts beyond the Seas, and the said day of in the year aforesaid, and at divers other dayes then next following, at C. aforesaid, in the County aforesaid trayterously did make his aboad, against the form of the Statute of *Eliz.* late Queen of England, in a Parliament at *westminster*, in the seven and twentieth year of her Reign, and contrary to the Peace, &c. and that W. B. of C. aforesaid in the County aforesaid, Merchant, knowingly, wilfully, and feloniously afterwards, that is to say, the said day of in the year aforesaid, at C. aforesaid in the County aforesaid, did receive and comfort the said A. B. being then at large and out of Prison, and then and there knowing the said A. B. to be a Jesuite, against the form of the Statute, &c.

Since the Statute of 25. *Ed.* 3. in which there was a Declaration what should be adjudged Treason, there have been severall Statutes made either as additions or expositions of that Statute, 21. *R.* 2. 2. *H.* 5. 3 *H.* 6. 8. *H.* 6. 4. *H.* 7. 26, 27. 28. 33. 33. 35. *H.* 8. 1. *Ed.* 6. all which were repealed by an *Act.* 1. *Mar.*

Since which Repeale divers offences have been made or declared Treason, whereof some were additions to, or expositions of the former Statute of 25. *Ed.* 3. 1. *Mar.* 1. & 2. *Ph.* & *Mar.* 5. 15. and 18. *Eliz.* in whole time, viz 5. 13. 23. & 27. of her Reign, and 3. *Jacobi* divers other offences have been made Treason, which Statutes being too long to recite, I referr the Readers to the Originals, and come to Misprision of Treasons under which notion are,

1. To draw a Sword, or strike a Justice sitting in place of Judgement.
2. To strike a Juror in presence of the Justices sitting in place of Judgment.
3. To strike another in *westminster* Hall sitting any of the Kings Courts there, in which three Cases the Offendor shall have judgement, as in Misprision of Treason, and besides shall have his right hand cut off, *Stamp. pl. Cor fol. 38.*

What is Misprision.

Misprision is properly when one knoweth that another hath committed Treason or Felony whereto he was not consenting, but yet doth not discover the Offendor to the King nor his Counsell, or to some Magistrate, but doth conceale the same, *Stamp. pl. Cor. fol. 37.*

For which Misprision, if it be of Treason, the Offendor shall forfeit to the King all his goods, and chattells for ever; and the profits of his Lands during his life, and shall be imprisoned during his life, but for Felony he shall only be fined.

And it is to be noted, that in high Treason, Misprision of Treason, and *præmunire*, That Justices of Peace, neither by their Commission or any Statute cannot meddle with them in the very point of their Offences but only by way of enquiry: Yet for that all Treasons and other Offences that are against the Peace, they may upon complaint made to a Justice of Peace, or other knowledge which he shall have of any such Offendors, he may cause Offendors to be apprehended, and he, and some other Justices joyning with him, may take their examination, and the information upon Oath of such as bring them, or of any others that can prove any thing materiall

materiall against them, and put the same in Writing (under the hands of the Informers) and then commit the Offendors to the Goale, and to binde by Recognizance all such as do declare any thing materiall, to appear and give Evidence against such Offendors before the Lords of the Privy Councell, or elsewhere, and after being therunto required to certifie their proceedings unto some of the Lords of the Privy Councell,

For the Rape of a Maid, upon the Statute of 13. Edw. 1.

TH E Jurors, &c. do present, that whereas in the Statute in Parliament, of Edw. the first, sometime King of England, holden at westminster, in the 13. year of his Reign made, It was among other things provided and enacted, that if any man should ravish a Wife, Maide, or any other woman which doth not consent either before, or after, shall have Iudgement of life, and member, as in the Statute is more at large contained. Nevertheless, one A. B. late of C. in the County of H. aforesaid, Yeoman, the Statute aforesaid not regarding, nor the pain therein contained fearing, the day of in the year &c. C. O. the Daughter of I. O. at C. aforesaid in the County aforesaid, against her will Feloniously did Ravish, against the Peace, &c. and contrary to the form of the Statute, &c.

For the Rape of a Child under the age of ten years, upon the Statute of 18. Eliz.

TH E Jurors, &c. do present, that A. B. of C. in the County of D. aforesaid Taylor, the
day

day of in the year of, &c. at C. aforesaid in the County aforesaid (in the dwelling house of G. H. Inholder) with force and armes in and upon M. N. of C. aforesaid, a Maiden-child, under the age of ten years then being, Feloniously and Carnally did know, and the said M. N. did wickedly abuse against the Peace, and against the form of a Statute in Parliament, of Eliz. late Queen of England, held at *Westminster* in the County of *Middlesex*, in the eighteenth year of her Reign, in such case made and provided.

For the Rape of a Maid of sixteen years upon the Statute of 13. Edw. I.

Midd. ff.

THE Jurors, &c, do present, That A. B. late of I. C. in the County of *Middlesex* aforesaid Vintner, the day of in the year, &c. At C. aforesaid, in the County aforesaid, in a certaine place called, &c. with force and armes, in and upon I. C. of G. in the County aforesaid, a maide of the age of sixteen years, then and there in the peace of God, &c. being; did make an assault, and against the will of the said I. C. feloniously her did Ravish, and Carnally know, against the Peace, and contrary to the forme of the Statute in Parliament of Ed. the first, heretofore King of England, held at *Westminster*, in the County of *Middlesex*, in the thirteenth year of his Reign in that case made and provided.

Term. Mich. 4. Caroli. Upon examination of the validity of a Bill in the Star-Chamber between *Taylor* and *Towlin* for a Conspiracy to indite the Plaintiff of a Rape; the Plaintiff alledged in his Bill, that an Indictment was preferred by the Defendant against the Plaintiff before the Justices of Assise,

Affise, & nisi prius, in the County of *Suffolk*, and did not lay it in his Bill that the Indictment was preferred before the Justices of *Oyer and Terminer*, and *Goale-Delivery*, and the Exception was by the Court holden good, for that the Justices of *Nisi prius* have not power to take Indictments; and in this case *Richardson* said, that in Conspiracy the matter must be laid *Falso & malitiose*, and if it be laid for a *Rape*, it must be laid, that there was *Recent prosecutio* of it, otherwise it will argue a consent, and therefore because the Defendant did not prefer an Indictment in convenient time, after the *Rape* supposed to be done, but concealed the same half a years time, and then would have preferred a Bill of Indictment against the Plaintiff, he held that the Indictment was false and malicious. And *Hide Cheise* Justice said that upon probable grounds, a man might accuse another before any Justice of the Peace of an offence, and though the accusation be false, yet the accuser shall not be punished, but where the accusation is false, and malicious, it is otherwise.

Out of which Premises I Observe,

1. That the Justices of *Nisi prius* (*eo nomine*) have no power to take Indictments.
2. That in Conspiracy the matter must be laid (and proved to be) *falso & malitiose*. and not *falso* only.
3. That if it be laid for a *Rape*, it must be laid, that there was fresh prosecution, otherwise it will argue consent.
4. Because the prosecution was not till half a year after the *Rape* supposed to be done, the Indictment was held to be *false and malicious*.

Upon an Indictment of *Rape*, because the King is held a party, the Sheriffe shall enter a Liberty to serve

serve the Writ, and shall not be sent to the Bayliffe, and for the naughty Return of the Bayliff, Sheriffe shall be amerced, because he made not the Pannell, for there is no Liberty against the King. 38. lib. Ass. p. 19.

Petty Treason, against a woman poysoning her Husband, and the accessory.

THE Jurors, &c. do present; That E. B. late of M. in the County of Lanc. Spinster, now the wife of I. B. Gent. and late the wife of R. A. Esquire now deceased, not fearing God, nor having him before her eyes, not considering the due obedience to the aforesaid R. A. her Husband, but led and seduced by the instigation of the Devil, the first day of June, in the year of our L. God 1650 of M. aforesaid in the County aforesaid, with force and armes, of her malice prepensed, a certain fayned conserve, commonly called a conserve of Prunes with mortal poyson called *Rats-bane*, feloniously and Trayterously did mingle and poyson, knowing the poyson aforesaid to be poyson, and the same fayned conserve of Prunes so mixt, corrupt and poysoned, then and there feloniously and trayterously did give to the said R. A. then her Husband, which R. A. not fearing or distrusting the mixture, corruption or poyson aforesaid, the same fayned Conserve with the poyson aforesaid by the said E. so poysoned by the procurement and instigation of the said E. then and there did taste, eat, and swallow down, of which said Conserve of Prunes, so with the said poyson aforesaid mingled poysoned and received, the aforesaid R. A. did most greivously languish from the aforesaid first day of June, aforesaid untill the sixteenth day of the same moneth of June, upon which

which sixteenth day of *June*, the year aforesaid the said *R. A.* so mortally poysoned with the Poyson aforesaid dyed; and the aforesaid *E.* the aforesaid *R. B.* her late Husband, falsely, trayterously, and feloniously of her malice fore-thought, with the poyson aforesaid did kill, poyson, and murder, contrary to the form of the Statute, &c. And that *I. B.* late of *M.* in the County aforesaid Gentleman, before the aforesaid Felony and Murther, in form aforesaid committed; that is to say, such a day and year, &c. at *M.* aforesaid, the said *E.* to the aforesaid Treason, Felony, and Murther, in manner and forme aforesaid done, and committed, feloniously and trayterously, and of his malice fore-thought, did procure, abet, and Counsell, contrary to the form of the Statute, &c. And that the said *I. B.* knowing the aforesaid *E.* the Treason, Felony, and Murther aforesaid so committed, such a day and year, &c. at *M.* aforesaid, &c. the same *E.* feloniously, and trayterously, did receive, comfort, dyet, lodge, and support, contrary to the form of the Statute in that case made and provided, and according to the Peace, &c.

Against a Servant for killing his Master.

THe Jurors, &c. do present, that *C. D.* late of *E.* in the County of *G.* Labourer, late Servant of *H. I.* of *E.* aforesaid, in the County aforesaid Yeoman on such a day and year, &c. at *E.* aforesaid, with force and armes; *viz.* With one Sword and Dagger drawn, of the value of ten shillings, which the said *C. D.* then and there in his hands held upon the said *H. I.* then his Master, in the peace of God, and the Keepers of the Liberty of *England*, &c. being wilfully, and of his malice
forg.

fore-thought, did make an assault, and the same H. I. then his Master, then, and there with the said Sword, feloniously and trayterously upon his head with great force did strike, so that with the said blow the head of the said H. I. then his Master, then and there in two parts did cut, giving him a mortall blow, of which the body of the said H. I. immediately there fell on the earth, and the said H. I. instantly there of the said blow dyed; and so the foresaid C. D. at E. aforesaid, of his malice fore-thought the said H. I. his Master, in manner and form aforesaid wilfully, wickedly, feloniously, and trayterously did slay, and that one L. N. late, &c. before the Treason aforesaid by the said C. D. as aforesaid wilfully done and committed; viz. Such a day and year, at, &c. the same C. D. to the Treason aforesaid in form aforesaid to be done and committed, feloniously did counsell, excite, and procure, contrary to the Peace, &c.

Indictment of a man poysoning his Wife.

Staff. ss.

THe Jurors, &c. do present, that A. B. late of C. in the County of *Stafford* aforesaid Tanner, not having God before his eyes, but being seduced by the Instigation of the Devill, the tenth day of A in the year, &c. at C. aforesaid, in the County aforesaid, with force and armes, of his malice fore-thought, A certain drinke called an Ale berry with deadly Poyson called *Rats-bane* and *Arsnick*, knowing the said Poyson called *Rats-bane* and *Arsnick* to be poyson, feloniously did mingle and poyson, and the same drink called an Ale-berry, so with poyson mixt, then, and there wilfully and feloniously did give unto E. B. then his Wife to eat, and swallow,

swallow, which the said E. not distrusting, or fearing the mixture, corruption, and poysoning aforesaid, the same Drink with the poyson aforesaid mixt, corrupt, and poysoned by the procurement and instigation of the said A. B. did take, drinke, and swallow, of which drinke so mingled, poysoned, and corrupted, by the working of the said deadly poyson, the said E. B. at C. aforesaid, did grievously languish, from the said tenth day of A. untill the fourteenth day of the same moneth, upon which fourteenth day of A. the said E. so mortally poysoned by the said A. her Husband at C. aforesaid, in the County aforesaid, of the Drinke aforesaid so mixt with poyson as aforesaid, dyed, and so the aforesaid A. B. the aforesaid E. B. his Wife falsely, wilfully, and feloniously, of the malice of the said A. B. fore-thought, did kill, poyson and murder, against the Peacc, and contrary to the form of the Statute.

For a Marther and Procurement in the high-way.

Essex. B.

THE Jurors &c. do present, that A. B. late of C. in the County of D. Labourer, the tenth day of O. in the year of &c. between the houres of six and seven of the Clock in the afternoon, of the same day, not having God before his eyes, but seduced by the Instigation of the Devill, of his malice fore-thought, with force and armes, &c. in and upon R. P. in the Kings high-way, at P. in the Parish of S. in the County of E. then and there, in the Peace of God, &c. being, did make an assault, and with one Staffe of the value of two pence, which the said A. B. held in both his hands, the said R. P. upon

upon the right part of his head, then and there feloniously did strike, giving to the said *Richard* then and there, with the aforesaid staffe, one mortall blow, in length two inches, and in depth half an inch, of which mortall blow the said *R. P.* at *E.* in the Parish of *S.* aforesaid, in the County of *E.* aforesaid, from the said tenth day of *O.* in the year aforesaid, untill the second day of *February* then next following, did languish, upon which second day of *Feb.* in the year aforesaid, the said *R. P.* of the said mortall wound died. And so the Jurors aforesaid, upon their Oathes, do say, that the said *A. B.* the said *R. P.* within the Parish of *S.* aforesaid, in the County of *E.* aforesaid, the said first day of *Febr.* in the year aforesaid, of his malice forethought in manner and forme aforesaid feloniously did kill and murther against, the Peace &c. And that *Kath P.* wife of the said *R.* late of *L.* aforesaid in the County aforesaid Spinster, before the felony and murther by the said *A. B.* in manner and forme aforesaid committed, that is to say the ninth day of *O.* in the year aforesaid the same *A. B.* at *L.* aforesaid in the County aforesaid, unto the felony and murder aforesaid, in manner aforesaid, to be done and committed feloniously did excite, abet, and procure, against the peace, &c.

For the murder of a Bastard Childe by the Mother and Midwife, and Accessories before and after.

Norff.

THe Jurors, &c. do present, That *A. B.* late of &c. Widow, being great with Child with a certain living Infant, the twentieth day of *May*, in the the year of our Lord God 1650. At *P.* in the

E

County

County foresaid, by the providence of God brought forth a Female Child alive. And afterwards, one C. D. late of P. aforesaid, &c. At P. with force and Armes of her malice fore-thought, the said twentieth day of *May*, in the year aforesaid about eleven of the Clock in the forenoon of the same day, by the councell, command, and procurement of the said A. B. and in the presence of her the said A. B. upon the said living Female Child did make an assault, and with a Knife of the value of one peny which the said C. in her right hand then held, the rthoat of the said Female Child, then, and there did cut, giving to the said Female Child a certain mortall wound in her said throat, of which mortall wound the said Female Child at P. aforesaid in the County aforesaid, then, and there instantly died. And that the aforesaid A. B. then, and there feloniously was present comforting and ayding, to the killing of the said Female Child in manner aforesaid. And so the said A. B. and C. D. the foresaid Female Child of their malice forethought feloniously and wilfully did kill and murder, contrary to the peace, &c. And the said Jurors do further present that E. F. late of &c. the sixteenth day of *May*, and at divers other dayes and times before the said Felony and Murder, in forme aforesaid committed at P. aforesaid, in the County aforesaid, maliciously and feloniously did councell, command, procure, and abett the said A. B. the said wilfull murder to commit, and the said Female Child, to kill and murder against the peace, &c. And further that G. H. and I. K. of P. aforesaid Spinsters, after the felony and murder in forme aforesaid done, her the said A. B. at P. aforesaid in the County aforesaid—Such a day and year, &c. feloniously did receive against the peace, &c.

For murder of a Woman by Crushing and beating her with Fists.

Devon. ss.

THe Jurors, &c. do present that such a day and year, about ten of the clock in the forenoone of the same day, one A. B. of &c. in the said County Labourer, and one C. D. of &c. in the said County Labourer, by the speciall command and direction of E. F. of &c. of their malice forethought, notwithstanding God before their eyes, but led by the instigation of the Devill, with force and armes, that is to say, with Staves, &c. and other weapons, as well invasive, as defensive, by the speciall command of the aforesaid E. F. in and upon one G. H. being then great with Child, at L. in the said County, did make an assault, and that the G. did then and there beat, wound, and evill intreat, and also the said A. B. by the command of the said E. F. the said G. then, and there upon the ground did cast, and with his knees upon the ground aforesaid, did crush the body of the said G. and the aforesaid G. then, and there, by the haire of her head did draw, and the head and face of the said G. with his Fists did beat and wound, and the said G. by the neck did strangle, and evill intreat, of which assault wounds, strokes, evill intreating, and other enormities aforesaid, the said day of aforesaid, about the houre of two a clock in the afternoone of the same day, at L. aforesaid, died. And that the foresaid C. D. by the Command of the foresaid E. F. the said day of in the yeare aforesaid, at L. aforesaid, upon the said G. did make an assault; and her with a Staff price &c. which he then, and there held up, did beate, of

E 2 which

which assault beating, and evill intreating the said G. had died, if she had not died by the wounds, blowes, evill intreating, and other enormities, to her by the said A. B. there given; And so the said A. and C. by the command of the said E. F. in manner and forme aforesaid feloniously, and of their malice forethought, did kill, and murder against the Peace.

Against a Woman for murdering of her Child.

Derby ff.

THe Jurors &c do present, that A. B. late of C. in the County aforesaid Spinster, being with child of a certain live Infant, (such a day and year) about 12. of the clock in the afternoon, viz in the night of the same day at C. aforesaid, in the Countrey aforesaid by the Providence of God, a certain male child, born alive in a certain house, secretly, and without the company of any other woman, did beare and bring forth; That the foresaid A. B. late of C. aforesaid of malice of the said A. forethought, the said Male child so borne alive, and in a naturall being, then, and there, that is to say, immediatly after the birth of the said Male child, feloniously did choke and strangle; by reason of which choaking and strangling the aforesaid Male child, then, and there instantly died, and so the aforesaid A. B. the Male child aforesaid in manner and forme aforesaid, feloniously, and of the malice forethought of the said A. B. did kill and murder against the Peace.

For a murder by two, and an Accessary before the Fact.

Nott. ff.

THe Jurors, &c. do present, That A. B. late of &c. and C. D. late of &c. such a day and year at,

at, &c. with force and armes of their malice prepen-
sed; in and upon one E. F. then and there in the
peace of God, and our Sovereign Lord the King
being, did make an assault, And the aforesaid A. B.
with a certain drawn Sword, of the value of five
shillings, which the said A. B. in his right hand,
then and there had and held, the said E. F. upon
the fore-part of his head wilfully and feloniously
did then and there strike, and with that stroke
did give unto the said E. F. one mortall wound, in
length three Inches, and in depth five Inches
and a halfe, of which mortall wound the said E. F.
then and there instantly, and immediatly died. And
further, that the said C. D. with a certain Staff, to
the value of one halspeny, which in his hands he
then and there held: the same E. F. then and
there wilfully and feloniously did strike upon
his head, giving to the said E. F. another mortall
wound in his said head, in length three Inches, and
in depth two Inches, of which said last blow the
said E. F. had died, if he had not died of that
first stroke which the said A. B. first gave. And so
the Jurors aforesaid say, that the aforesaid A. B.
and C. D. the said first day of *September* in the year
aforesaid at N. in manner and forme aforesaid, of
their malice forethought, the said E. F. wilfully
and feloniously did kill and murder, contrary to the
peace, &c. And that J. H. late of &c. before the
Felony and murder aforesaid by the said A. B. and
C. D. in forme aforesaid, committed and per-
petrated, viz such a day and year, &c. at &c.
the aforesaid A. B. and C. D. to the Felony and
Murder aforesaid, in manner and forme aforesaid
to be done, and perpetrated, did counsell, incite,
abet and procure against the peace, &c.

Browne, Bromley, and Portman, Iustices, held,
E 3 that

that if a Son or Daughter in Law, shall kill his, or her Father in Law, or Mother in Law, who give them meat, drink and cloathing, and the Son or Daughter do them necessary service, if they be indicted thereof by the name of servant, and proditorie being in their service, this is Petit Treason, though they take no wages of them *Kelm. Rep. fol. 204.*

For killing a man by Witchcraft.

Suff. ff.

TH E Jurors, &c. present, That A. B. late of C. in the County aforesaid Spinster at G. in the County aforesaid, certain detestable Arts called Witchcraft and Sorcery, wickedly and feloniously, did practise, and exercise in and upon one C. D. of &c. by which Art the said C. D. the twentieth day of Aug. in the year of our Lord aforesaid, most dangerously and mortally fell sick and languished, and the four and twentieth day of August in the year aforesaid, the said C. D. by the Arts aforesaid at G. aforesaid in the County aforesaid died. And so the Jurors present, that the said A. B. the said C. D. at G. aforesaid, in manner and forme aforesaid of her malice forethought, wilfully, divellishly, wickedly and feloniously by the Arts aforesaid, did kill and slay, contrary to a Statute in Parliament held at *Westminster* in the County of *Middl.* in the first of the Reign of &c.

And because there is some alliance and relation between Witchcraft and Conjuraton, it is not amiss to set down the Definition of the one, and the other, as you may find it in the Exposition of the Terms of the Law,

Conjuraton is a compact or plot made by men combining themselves together by Oath or Promise,

mise, to do any publique harme ; (in which sence Tully calls the evill and seditious practises of *Catalinae, Conjuratio Catalinae*, but it is more commonly used for such as have personall conference with the Devill, or Evill Spirits to know any Secret, or to effect any purpose, *Anno 5. Eliz. ca. 16.* And the difference between Conjurat[i]on and Witchcraft, may be said to be this, because the one seemeth by Prayers, and Invocations upon the powerfull Name of God, to compell the Devill to say, or do what he commandeth, and the other doth rather by a friendly and voluntary conference, or agreement between him or her, and the Devill or Familiar, to have his, or her desires and purposes effected, in stead of blood or other gift offered unto him, especially of his or her soule, and both these differ from Enchantments or Sorceries, because that they are personall conferences with the Devill, as is said, but these but medicines and ceremoniall formes of words, commonly called Charms without Apparition.

If a man be Indicted as accessary to murder, as of assent, or procurement, or receiving, &c. if he be taken for this, he may sue forth a Writ, directed to the Sherisse, that he let him go upon Baile, &c. untill the principall be convict or attaint, if they be of good fame, *Fitz H. nat. Brev. fol. 150. E.*

And if a Man be acquitted of Murder within the year at the suit of the King, yet he shall be remitted to Prison, till he finde Sureties to appeare at every such time as the Justices shall require him, till the end of the year. *Ibid. F.*

And note that no Attaint lyeth upon a false Verdict given in an Appeale of Mayheme, Felony, or Murder, *Fitz H Nat. Br. fo. 107. L.*

But if any Jurors be convicted of a false Oath, they shall be put in Prison, and then it behoves them to

sue to the King to make Fine for their Imprisonment, and when they have agreed with the King, they may sue forth a Writ to remove the Record into the Kings Bench. *Fit. N. 6. fol. 109. L.*

Mich 28. and 29. Eliz.

A Man being Indicted for Murder, Mr. *Altham* of *Craves Inne* took many exceptions to the Indictment;

1. Because the Indictment said, That *Capta* *suit inquisitio Coram Coronatore in Com. H.* and doth not say *de comitatu*.

2. Because it is said, *Inquisitio capta super sacrum*, and did not say *Jurati*.

3. That he doth not say, That he was *in pace dei & Dom. Regine*, for he might be a Traytor, and was flying, and then it was lawfull to kill him, or perhaps it was *in se defendendo*.

4. The Indictment was *Percussit*, but saith not *ex malitia p̄ cogitata*.

5. Because it saith, *Dedit ei plagam mortalem*, but doth not say, *cum gladio predic.*

6. That the pan of the knee was cut out, and doth not shew the length, breadth, depth, which ought to be when any single member was not cut off.

The Justices all inclined that the Indictment was good, notwithstanding the exceptions, but said they would advise, and see Presidents, which the diligent Student may look after for his satisfaction in the point.

For Burglary and murder by strangling.

Devon. ff.

THe Jurors &c. do present, That *H. J.* late of &c. in the County aforesaid Labourer, & *W. C.* late

late of &c. in the said County. Labourer, the tenth day of *June* in the year of our Lord God 1651. about ten of the clock in the after noone, viz. in the night of the same day at P. in the County aforesaid the mansion house of one *H.H.* with force and armes, feloniously and burglarly did break and enter, and the said *H.* and his family in the house aforesaid being, and by the said *H.I.* and *W.C.* in feare of their lives being put, with intent to kill, murder, and destroy, one *W.H.* late of &c. in the said house then and there being, and that the said *H.I.* and *W.C.* the said day, year, place, and houre, of the malice of them the said *H.* and *W.* forethought upon the said *W.H.* in a certain Bed in a Chamber, parcell of the said mansion house being sound, did make an assault, and then and there with their hands, and a certain Handkercher of the value of &c by them the said *H.I.* and *W.C.* then and there held about the neck of the said *W.H.* did fasten, and the said *W.* of the malice of the said *H.I.* and *W.C.* forethought, did then and there choke and strangle, of which choaking and strangling the said *W.H.* then and there instantly died, and the fore-said *H.I.* and *W.C.* of their malice forethought, in forme aforesaid at P. aforesaid in the County aforesaid, feloniously did kill and murder, against the peace &c.

For Manslaughter.

Kent. ss.

THe Jurors &c do present, that *A.B.* late of *C.* in the County aforesaid Yeoman, the 20 day of *October.* in the year of our Lord God, 1652. at *D.* in the County aforesaid with force and armes, in and upon one *E.F.* in the peace of God and &c. being, did make an assault, and with a Sword,
of

of the value of 5. s. which he then in his right hand did hold, upon the head of the said *E.F.* a mortall wound did give in length three inches, and in depth two inches, of which mortall wound the said *E.F.* instantly died. And so the said Iurors do say that the said *A.B.* the said *E.F.* the said twentieth day of *October* in the year aforesaid at *D.* aforesaid feloniously did slay and kill, against the peace,

*For killing one with an Arrow by
mischance.*

Leiceſter.

THe Iurors &c. do present, That whereas *T.I.* late of *S.* in the County aforesaid Yeoman, such a day and year, at *L.* &c. with divers other persons Archers shooting at certaine marks in length an hundred and twentie paces. That the said *T.I.* the day and year aforesaid, at *L.* aforesaid shooting at a mark at the length aforesaid. And one *T.H.* a deare friend of the said *T.I.* when the said Arrow was flying came before others so near the mark, viz. within the space of three foot, and the said Arrow being shot from the said Bow by the strength thereof flying at large, the foresaid. *T.H.* being so neare the Mark, in manner and forme aforesaid, then and there against the will of the said *T.I.* into his belly did shoot, and gave unto the said *T.H.* then and there a mortall wound, of which mortall wound the said *T.H.* or *L.* aforesaid, untill the fourteenth day of *July* then next following, did languish, upon which 14. day of *July* the year aforesaid about one of the clock afternoone of the same day, the said *T.H.* of the wound aforesaid died. And so the said *T.H.* came to his death and not otherwise.

For

For homicide by a mad man.

Heref. ss.

THe Jurors, &c. do present, That A. B. late of C. in the County aforesaid Yeoman, the tenth of June, in the year of our Lord God. 1653. not having God before his eyes, but being led by the instigation of the Devil, and not being in his right mind, but in fury and madness, with force and armes, and feloniously at C. aforesaid, in the County aforesaid, in and upon one C. D. did make an assault, and the aforesaid C. with a Staff of the value of one penny, which the said A. B. in his hands then, and there had, and held; the said C. D. upon his head feloniously did strike, and gave to the said C. a mortall wound, in length, &c. and in depth, &c. of which mortall wound the C. D. instantly died; And so the said A. B. not being in his right minde, nor sound memory, but in his fury and madness, the said C. D. at C. aforesaid, the day and year aforesaid feloniously did kill against the peace, &c.

5. Jacobi, At Newgate Sessions.

A Man was Indicted upon the Statute of 1. Jac. for stabbing, which was declared to be Felony, without Clergie, but coming to be tried by the Jury of Life and Death, it being proved that the party killed had a Cudgell in his hand, It was adjudged, That it was a weapon drawn within the intent of the Statute, and the party was Indicted of Felcny, and not of Murder.

Hillary 9. Jac. in Banc. Regis.

TWo Boyes did contend and fight neare unto their houses, and the one did strike the other,
so

so as he did bleed, who went and complained to his Father, who having a rod with him, came to the other Boy and beate him, upon which he died; and the Opinion of the whole Court was, that it was not Murder.

Pasc. 15. Car.

William Marshall, and other Bayliffs had an Execution (*viz.* a *Capias satisfaciendum*) against Cooke and others, which Bailiffe came to Cookes, and lay one night in the outhouses privily, and the next morning they came to his dwelling-house, and gave him notice of the Execution. Cooke shut the doors of his house close, so as the Bailiffs could not enter; whereupon they breake the Glass windowes, and the Hinge of the Doore, endeavouring to enter; whereupon Cooke commanded them to be gone, or he would shoot them, notwithstanding, they did still continue in their doing, whereupon Cooke shot Marshall one of the Bailiffs, and whether this was Manslaughter or Murder was the Question.

Rolles argued that it was not Murder, First, because the Bailiffs act of breaking the Glass-window, and Hinge of the door was an unlawfull act, and at their perill. Secondly, It was not Murder, because the person was in his own house, which is his Castle and defence, which is a place priviledged by Law, 26. *L. Ass* 3 *Ed.* 3. 330. 305. Thirdly, This authority which is given to the Kings Officer is given by the Law, which if he execute according to the Law, the Law will protect him, but if he exceed the priviledges giving him by the Law, then all he doth is illegall, and he loseth its protection. And it was agreed by all the Iustices, *Nullo contradicente*, that it was not Murder, but that it was Manslaughter, for

for this reason especially, because the Officer was doing an unlawfull act not warranted by Law, and therefore it was at his perill if he were killed.

Manslaughter Pas. 16. Car. in the Kings Bench.

Sir Mathew Mincks, was Indicted of Manslaughter, and found guilty, and it was moved by Sir Rob. Holborne being of his Councell, that the Indictment was insufficient;

1. Because there was *Dans, &c.* without *ad tunc* & *ibidem*, according to presidents.
2. Because it was *Plagam seu contusionem* which was uncertaine.
3. Because it was said, that the party killed, *Languerat a predict. 15. die usque decimam sextam*; and he said there was no time between those two dayes, but it ought to have been that he languished from such an houre, till such an houre, and he said, that sower the ancient Presidents. And he said that an Indictment that A. killed B. *inter horam decimam & undecimam* was adjudged naught, and tooke other exceptions, all which were disallowed by the Court, whereupon Sir Mathew prayed his Clergy, and had it.

In ancient time the Will was held so materiall, it was taken for the Fact, so that a man beating another so grievously, that he left him for dead, for which he was found guilty of Felony: P. 15. Ed. 3. p. 387. in which Case it is said by Bracton, that *in malis factis spectatur voluntas non exitus*. But the Law is not so now, that the Will where no Fact doth ensue thereupon, makes not the offence at this time, *ubi exitus spectatur, non voluntas duntaxat.*

Felo

Felo de se.

HE that having committed some offence, be outlawed, or taken in any wicked act, and for fear of punishment, kill himself shall forfeit his Land; but if a man by tediousness of his life, or impatience of griefe kill himself, he shall not lose his Inheritance, but only his moveable goods, and it seems the same Law is for Mad men, and infants, or such as have some grievous infirmities, because they want reason like brut beasts, cited by Stamford, pl. Cor. fol. 19.

And because there are so many *pereundi modi*, and by so many severall wayes men come to their untimely ends, whereof the Coroner is to take Cognisance; I have thought good, to recite his duty, as I finde it set down by Mr. No. in *officio Coronatoris*.

When the Coroner is to enquire of the death of any man who comes to untimely death, or to do any thing concerning his Office, he ought to do it in person, and upon the suddain death of any man, he himself ought to see the body when he maketh enquiry, otherwise the enquiry is not good, for if he will enquire of any dead person without view, that is, without Authority. And if the body be buried before his comming, he ought to Record it in his Rolls, to the intent that the Town where the burying was, should be amerced before the Justices of Eyre, upon the sight of his Rolles. And nevertheless the Coroner ought to digge the body out of the ground, and take enquiry upon the view of the body as if it had not been buried, and the Town also shall be amerced, if they do not bury it,
but

but suffer it to lye upon the ground to putrifie and
sinke, without sending to the Coroner. And if the
Coroner be remiss and negligent in comming to do
his Office after he hath been sent for, he shall be
punished; of which, and what manner of men should
have that Office, *vide Express Termes of the Law,*
fol. 86.

Pasc. 21. Jac. in the Kings Bench.

Davers was Arraigned for the death of *Dutton*,
and the Lord Chief Justice *Ley* delivered it for
Law, That if two men voluntary fight together,
and the one killeth the other, if it be upon a sud-
daine quarrell, that the same is but Manslaughter;
and if two men fight together, and the one flieth
as farre as he can, and he which flieth, killeth him,
that pursues him, the same is *se defendendo*;
also if a man assault another upon the High-way,
and he who is assaulted killeth the other, he shall
forfeit neither Life, nor Lands, or Goods, if he
fled as far as he could.

There be also some other Homieides for which a
man shall forfeit, neither life, lands, or goods, or
suffer any corporall punishment.

If a Warrant do issue to arrest a man indicted of
Felony, and he will not suffer himself to be arrested,
he that hath the Warrant may lawfully kill him.
22. lib. Ass. fo. 55. tit. Coro.

If a man Arrested of Felony, and as he is bring-
ing him to the Gaole, he runs away, and the other
pursues him, so that he could not take him without
killing him, this killing is justifiable. *Tit. Coron. Fitz.*
H. 3. Ed. 3. Stamf. pl. Cor. fo. 13.

A Goaler came into the Goale to see his Priso-
ners, who had broken off their Irons, and were ready
to

to kill him, and did sore beat him, but he having a Hatchet in his hand, killed three of them, and after escaped, and it was adjudged that he had well done.

A. and B. falling out, A. strikes B. and B. flies as farr as he can for saving of his life. A. pursues him to a streight, so that he can flye no further, and then strikes A. and kills him, not Felony.

And if A. strike B. and B. strike him againe often, and before he have given him any mortall wound, and after being pursued B. kills him, not Felony.

If a Lunatique in rage slay a man, or one by misfortune kill a man, or an Infant within the age of eight years shall so, such a one so offending may sue his pardon for it of course, for which the use is to sue a *Certiorare* to remove the tenor of the Record and proceeding into the Chancery, and thereupon have his Charter of Pardon. *Fitz. Nat. br. fol. 248. B.*

A Judgement in the Kings Bench, Trin. Car. upon an Indictment against a man for having two Wives.

ONE *Williams* was indicted at *Bristol*, upon the Statute of 1. *Jac. ca. 11.* for having two Wives, and upon *Not guilty* pleaded; the Jury found a speciall Verdict, which was thus. That *Williams* married one Wife, and was afterwards Divorced *Causa adulterii*, and afterwards married the other, and whether that were within the Proviso of that Statute which provides for those which were Divorced was the Question. And it was resolved without Argument, by *Bramston* Chiefe Justice, and Heath (the

(and the other being absent) that it was within the Proviso, for the Statute speaks generally of Divorce, and it is a penall Law. And Heath said that by the Law of holy Church the parties divorced, *Causa adulterii* might marry, but *Pars rea*, not without Licence, and he cited the Case of Anna Porter of late in the Kings Bench, who was Divorced, *Causa fornicie*, and afterwards married one Kootes, and upon an Indictment upon this Statute it was doubted, and debated, whether it were within the Proviso of that Statute, or not, but it was resolved it was not, because only a Divorce a *cohabitatione*, and a temporall separation untill the anger past, but the Divorce here is a *vinculo matrimonii*.

37. Ed. 3. in the Assise, a Justice was Indicted for that he caused an Indictment which was found of Trespass to be entred in the Record of Felony, and this adjudged a void Indictment, because this was to make void the Record; but it seemeth he might be indicted for taking of money or other falsity.

For a Battery.

Staffs.

THE Jurors, &c. do present that A.B. late of C. in the County aforesaid Yeoman, the first day of May, in the year of our Lord God 1652. at D. in the County of &c. aforesaid with force and armes, in and upon E.F. in the peace of God, and &c. being, did make an assault, and affray, and him the said E.F. then and there with force and armes did beat, wound, and evill intreat, so that he did despaire of his life, and other harmes unto him did, to the great damage of the said E.F. and against the peace, &c.

F

For

*For a Battery and Mayme**Northton. ss.*

THE Jurors, &c. do present that A.B. late of C. in the County aforesaid Yeoman, the twentieth day of May, in the year, &c. about foure of the Clock in the after noone of the same day, at C. aforesaid in the County of Northampton aforesaid in the high way, there of malice of the said A. B. forethought for one T. I. in the peace of God and the Keepers of the liberty of England &c. being, and upon the said high way upon his necessary business labouring and going, did lay wait with intention, feloniously the said T. I. to Mayme, and then and there with force and armes, &c. in and upon the said I. in the peace of God, &c. being did make an assault, and him the said T. I. then and there with force and armes, &c. did strike, beat, wound, and evill intreat. So that of his life he did despaire. And that the said A. B. then and there with a Sword, which the said A. B. in his right hand, then and there had and held, the foresaid T. I. upon his left hand, feloniously did strike, and gave unto the said T. I. one great wound, by which the sinews and veins of two fingers, that is to say, of the least finger, and the next finger unto the said least finger are so mortified, and restrained, that the said T. I. the strength, and use of the said fingers hath wholly lost, and so the said A. B. the said T. I. feloniously, and of his malice forethought did mayme, in manner and forme aforesaid, contrary to the forme of the Statute, in such case provided, and against the peace, &c.

Pasc. 16. Jac. in the Kings Bench.

A Man was Indicted *de verberatione & vulnerati-*
one l. 5. and the words *vi & armis* were left out
 of the Indictment, and the same was adjudged to be
 helped by the Statute, and that the Indictment was
 good.

II. Jac. in the Star-Chamber.

IN the Case between *Miller* and *Reignolds*, Sir
Ed. Cooke said, that it appeared by *Briton*, that if
 a base fellow do strike a man of dignity, he shall
 lose his right hand.

Assault is, when one unlawfully sets upon the
 person of any man, as if he offer to beate him, though
 he beate him not indeed, or strike at him with a
 Weapon, though he strike him not.

Or he that lieth in waite, or beset a mans house,
 and will not suffer his servants to go in and out. 40.
Ed. 40. 22. Ass. Pl. 6.

Menaces are threatenng words to beat one, or such
 like, for feare whereof he cannot go about his busi-
 ness, with any other Damage, is Trespass.

Every Indictment and Inquisition of Treason,
 Murder, Felony, and Trespass, *vi & armis* must
 be set in, otherwise it is not good. 37.H. 8. cap. 8.
Finch, Ley, fol. 22.

For false Imprisonment.

Hereff.

THE Jurors, &c. do present, That A.B. late of
 C. in the County aforesaid Yeoman, the tenth
 day of *Aprill* in the year of our Lord God, 1652.
 At L. in the said County of *Hereford*, with force
 and

and armes in and upon D. E. in the peace of God and &c. being, did make an assault and him the said D: E. then, and there, with force and armes, did take, imprison, and evill intreat, and the said D. E. so there in Prison a long time, that is to say, by the space of seven dayes then next following, contrary to the Law and custome of the Common wealth of *England*, did detaine and keep, and other harmes to him did, &c: to the great damage, &c: and against the peace, &c:

For false Imprisonment of a Mans Servants.

THe Jurors, &c: do present, that A:B: late of C: in the County of H: aforesaid Gent: The tenth day of *June*, 1653. at L. in the County aforesaid, with force and armes, that is to say, with Swords, Staves, and other weapons, as well invasive as defensive &c. in and upon I.K, and L.M. Servants of N.O. did make an assault, and the said I:K: and L:M. contrary to the Law of the Custome of *England*, did imprison, and by the space of foure dayes then next following in prison did keep and detaine: And that the said N:O: the service of his servants aforesaid for a great time, that is to say, for the space of one month then next following, did lose, and other harms to him did, to his great damage, and against the Peace, &c.

For breaking Prison by a Felon.

Lanc.

THe Jurors, &c. do present, That, whereas A. B, was arrested and taken at W. in the said County of *Lanc.* for suspition of Felony by him in the
County

County of *Lanc.* aforesaid committed, that is to say, for the stealing of one Gelding, coloured Bay, of the price of five pound, of the Goods and Chattells of a person unknown, and for the same Felony at *Lanc.* aforesaid, in the County aforesaid, was committed to C. D. Esquire Sheriffe of the County aforesaid, safely and securely by the said Sheriffe in the Prison of the Keepers of the Liberty of *England, &c.* in the Castle of *Lanc.* to be kept, untill by the Law and Custome of *England*, he should in due manner be delivered. That the said A. B. late of C. in the County aforesaid Labourer, the sixt day of *July*, in the year of our Lord God, 1651. at *Lanc.* aforesaid, in the County aforesaid, in the Prison of the said Keepers of the Liberty, &c. in the Custody of the said Sheriffe then and there, being the Prison aforesaid, then and there, with force and armes, and feloniously did break, and out of the said Prison, and the Custody of the said Sheriffe, then and there feloniously did go at large, | whither he would, against the will of the said Sheriffe, and against the Peace, &c.

For giving in Evidence a false or forged Deed.

Midd.

THe Jurors, &c. do present, That whereas in the Statute in Parliament of *Elizabeth* late Queen of *England* holden at *westminster* the twelfth day of *January* in the fift year of her Reign published; among other things, it is ordained and enacted, That if any person or persons, after the first day of *June* then next following, should plead, publish, or give in Evidence, or otherwise, for the proof of any

title, any false or forged deed, charter, writing, will or court-roll, falsely made and forged as true, knowing the same to be false and forged, with intent to have or claime thereby any estate of inheritance, free-hold, or lease for years, in, or to any manors, lands, tenements, and hereditaments; or with an intention to alter, or make void, molest, trouble, or charge the state of inheritance, free-hold, or lease for years, of any person, in any manors, lands, tenements, rents, or hereditaments. That then every person and persons so offending, and thereof attainted and convicted, according to the lawes of this Kingdome, either by an action of forgery of false deeds, or by an action of the case, at the suit of the party grieved, his heires, executors, or assigns should pay to the party grieved double Costs and damages, and should be set upon the pillory in some open market-town, or in some other publique place, and should have both his or their eares cut off, and his or their nose slit, and seared with an hot iron, to remaine as a perpetuall mark and signe of his falshood, and shall forfeit to the said late Queen, her heires and successors, the issues and profits of all his lands and tenements during his life; As in the said statute more at large is conteined. Neverthelesse one W. B. late of C. in the County of M. aforesaid, knowing a certaine deed concerning a messuage, and one hundred acres of land of T. V. in W. in the County aforesaid, to be false and forged, did at W. aforesaid in the County aforesaid, publish the same as a true deed, with intent to have the state of inheritance to him and his heires in the same messuage and lands with the appurtenances. And to annull the state of inheritance of the said T. V. in the tenements aforesaid with the appurtenances, by means whereof

whereof the said T. in the possession of the said rements with the appurtenances, is disturbed and molested, in contempt of the Keepers of the liberty of England &c. to the great damage of the said T. Contrary to the forme of the statute aforesaid, and against the peace &c.

For bewitching a horse.

Midd. ss.

THe Jurors &c. do present. That *Ioane B.* late of *C.* in the said County of Midd. Spinster, the 20th. day of June, in the year of our Lord God 1652. at *E.* in the said County, did use, exercise, and practise most wicked arts, called enchantments and sorceries, maliciously and devilishly, in, upon, and against a certaine horse, coloured bay, of the price of five pounds, of the goods and chattels of one *I. S.* of *T.* in the County of *M.* aforesaid, Yeoman. By meanes whereof the said horse of the said *I. S.* the twentieth day of June aforesaid, at *E.* aforesaid, in the County aforesaid, was altogether impaired and wasted away. Contrary to the forme of the statute in that case made and provided, and against the peace &c.

For getting money by colour of Process.

Oxon. ss.

THe Jurors &c. do present, That *I. B.* late of *D.* in the said County of Oxford, Yeoman, at *D.* aforesaid in the County aforesaid, by colour and pretence of a certain processe under the scale of the late King of the Dutchy of Lanc. to one *I. Leegg* directed did make composition with the said *I. Leegg*, and then and there by colour and pretence

of the said process, did of the said I. Legg the summe of ten pounds in money numbred for himselfe, without any order or consent of any Court or Courts of the said King at Westminster unlawfully obtain and take, contrary to the forme of the statute in that case made and provided, the said I. B. not being a Clerk of any Court, &c.

For getting goods by counterfeit Letters.

Berks. ss.

THe Jurors &c. do present, That A. B. late of C. the said County of *Berks*, Scrivener, the first day of May in the yeare of our Lord God 1653. at M in the County aforesaid, imagining and devising with himselfe how he might unlawfully obtaine and get into his hands the goods, chattels, and jewels of other persons for the maintainance of his unthrifty kind of living, then and there falsely and deceitfully did write and counterfeit a letter in the name of one R. W. to one F. B. being the speciall friend of the said R. W. for the getting of 3 yards of woollen cloath, to the value of 40.s. of the foresaid F. B. And the foresaid A. B. afterwards that is to say, the 3. day of May aforesaid, in the year aforesaid, at M. aforesaid in the County aforesaid, by colour and meanes of the said counterfeit letter made in the name of the said R. W. as aforesaid, three yards of woollen cloath to the value of forty shillings, of the goods and chattels of the said F. B. from the said F. B. falsly and deceitfully did obtaine and get into the hands and possion of the said A. B. contrary to the forme of the statute, &c. and against the peace.

By getting money by a false token---as the former to this marke, and then say,

He said A. B. did then, and there falsely and fraudulently imagine and invent a false Token in the name of one R. W. to one F. B. being her speciall friend and familiar, for the getting of twenty shillings in money, numbred from the said F. B. then and there by colour of the said false Token, made in the name of the said R. W. the said twenty shillings falsely and deceitfully did obtain---*ut supra.*

For a Vagrant going under the name of a Souldier.

Sussex B.

The Jurors, &c. do present, That A. B. late of C. in the County of &c. aforesaid Labourer, being an idle person, and intending craftily, falsely, and feloniously to deceive and defraud the Keepers of the Libertie of England, &c. and the people of this Common-wealth, the tenth day of May, in the year, &c. 1653. and at divers other dayes and times, as well before, as after, at Gr. and at divers other places within the said County, did as a Souldier wander, and the said tenth day of May, in the year aforesaid, at G. aforesaid; did feloniously counterfeit and invent a certain Testimoniall in the name of one W. H. falsly by the said Testimoniall, supposing that the said A. B. landed at Dover, in the County of Kent, the 25th day of April, and was allowed by the said W. H. to travell to the place where he was Pressed, or where he was borne, whereas

whereas in truth the said A. B. never landed at *Dever* aforesaid. And whereas in Truth the said A. B. was never allowed by the said W. H. to travel to the place where he was pressed, or where he was borne, contrary to the forme of the Statute &c. and against the Peace &c.

For interrupting a Minister Saying Common Prayer.

Chester ss.

THe Jurors &c. do present, That A. B. late of C. in the County of *Wilt.* Yeoman, at C. aforesaid, in the County aforesaid, in the Parish Church of C. aforesaid, of his own power and authority, wilfully, and, of set purpose, by these open and contemptuous words following, by him the said A. B. then, and there in the Church aforesaid spoken and pronounced, viz: *Come down thou prating Knaves come downe*; maliciously, contemptuously, and unlawfully did disquiet, abuse, molest, disturb, hinder, and interrupt one T. C. Clark, Vicar of the Parish Church of C. aforesaid (being then Licensed, Allowed, and authorized by W. Bishop of *Chester* to Preach) in his publike Sermon and Preaching, which the said T. C. then, and there in the Church aforesaid, made Declaration, Preached and Pronounced, and other Harmes to the said T. C. did, contrary to the forme of the Statute, &c. and against the peace, &c.

For interrupting a Minister Saying Common Prayer upon the Statute. 1. Eliz,

Chester ss.

THe Jurors, &c. do present, that A. B. late of C. in the said County of C. Husbandman the fourth day

day of July, in the year &c. being the Lords day, at
C. aforesaid, in the County aforesaid, R. B. then be-
ing Vicar and Minister of the Church of C. aforesaid,
then, and there in the same Church publique-
ly saying the *Common Prayers*, according to the Book
of *Common Prayer*, by Act of Parliament, of *Elizabeth*,
late Queen of England, in the first year of her Reign
established, maliciously, and unlawfully did inter-
rupt and disturbe, and other harmes to him the
said R. did, contrary to the forme of the Statute, &c.
and against the Peace, &c.

For taking of a Sack but not feloniously.

Lanc.

THE Jurors, &c. do present That I. M. late of A.
in the County of L. aforesaid Labourer, the
day of in the year, &c. at W. in the said Coun-
ty of L. the Mansion house of H. N. with force and
armes, did enter, and then, and there with force and
armes, one Sack to the value of six pence. of the
Goods and Chattells of the said H. N. then, and
there found and being, unlawfully and against the
will of the said H. N. did take and carry away, and
to his own use did convert the same, to the great
damage, &c. and against the Peace, &c.

*For being absent from the Church on the
Statute of 1. Eliz and 28.*

Salop.

THE Jurors, &c. do present, That A. B. late of
C. in the County of *Salop* Gent. who the tenth
day of July, in the year, &c. 1650. was of the Age
of sixteen years and upwards, did not repaire to his
Parish Church of C. aforesaid, nor to any Church,
Chappell,

Chappell, or usuall place of *Common Prayer*, and there stand during the time of *Common Prayer*, at any time within six Moneths next following the said tenth day of *July*, in the said year 1650. but hath forborne the same by the space of six Moneths, contrary to the forme and Statute at *Westminster*, in the County of *Middlesex*, in the first year of the Reign of *Elizabeth*, late Queen of *England*, for the uniformity of *Common Prayer*, made and provided, and contrary to the forme of the Statute of the said Queen *Elizabeth*, in the three and twentieth year of her Reign; And in contempt, &c. and against the Peace, &c.

Mick. Terme Jac. in the Kings Bench.

A *Nne Manocke* was Indicted in *Suffolke*, upon the Statute of 1. *Elix. cap. 2.* for not comming to Church twelve Sundayes together, which Indictment was removed into the Kings Bench, and Exceptions taken to it.

1. That the Statute is, That all Inhabitants within the Realme, &c. and it is not averred in fact, that she did inhabite within the Realme — disallowed.

2. That by a *Proviso* in the Statute 28 *Elix. ca. 6.* It is ordained that none shall be impeached for such offence if he be not indicted at the next Sessions — which she was not — disallowed — because it may be there was no Session since.

3. The third Exception was, that she was indicted *Coram A. B. & sociis suis*, Justices of the Peace, and doth not name them particularly — disallowed.

4. That the words of the Statute are, Ought to abide in the Church till the end of *Common Prayer*, *Preaching*, or other Service of God, in the disjunctive, and

and the Indictment was in the Conjunctive—dis-
allowed; for though the words be in the disjunc-
tive, yet a man cannot depart so soone as Service
is ended, if there be Preaching, but he ought to con-
tinue there for the whole time.

*For keeping Vagabonds, Whores, and Idle per-
sons, and evill rule in his house.*

Midd. ss.

THe Jurors, &c. do present, that A. B. late of C.
in the said county of *Midd.* Virler, at C. afore-
said the first day of *May*, in the year *&c.* 1653. and
continually after untill the day of the taking of this
inquest, hath received, harboured and supported
divers vagabonds, Whores, and other idle and sus-
pected persons of evill conversation, and doth con-
tinually keep evil rule and government in his house,
to the great anuſance and disturbance of his Neigh-
bours, and contrary to the forme of divers Statutes,
and against the peace &c.

For keeping unlawfull Games.

Midd.

THe Jurors; &c. do present, that A. B. late of K. in
the said County of *Midd.* Virler the third day of
Sept. in the year, *&c.* 1651. and continually af-
terwards, untill the twentieth day of *October* in the
year aforesaid at K. aforesaid in the County afore-
said, a common house of carding, dicing, and table
playing, and for the proper gaine and profit of the
said A. B. unlawfully hath held, kept, and maintai-
ned contrary to the Statute in that case made and
provided; and that the said A. B. the said third day
of *September*, in the year aforesaid, and at divers o-
ther

ther dayes afterwards at K. aforesaid in his house aforesaid the aforesaid unlawfull Games of Carding Dicing and Table playing hath had, kept, exercised, used, suffered, allowed and maintained contrary to the forme of the Statute &c. and against the Peace, &c.

For keeping an unlicenced Alehouse.

Staff. J.

THe Jurors &c. do present. That A. B. late of *Forbridge* in the County aforesaid Vintler, the 20th. day of *July*, in the year &c. 1652. and at divers other times, as well before as after at T. aforesaid, did keep, and as yet doth keep a common Tipling-house, without Licence, and as well the said twentieth day of *July*, in the said year of our Lord 1652. aforesaid, as at divers other dayes and times, hath received and entertained in his house divers severall persons, as well Men as Women of evill behaviour, fame, and conversation, and evill rule in his said house from day to day, did maintain and keep, and yet doth maintain and keep, to the evill example of the people of this Nation, and manifest breach of the Peace, and contrary to the Statute, &c.

Against Company-keepers, with such as call themselves Egyptians.

Salop. J.

THe Jurors, do present, that A. B. late of C. in the County aforesaid Labourer, and E. F. late of C. aforesaid, in the County aforesaid Labourer, the tenth day of *February*, in the year of our Lord God, 1652. at W. in the said County of *Salop* within

within the Common-wealth of England, were in the company or Fellowship of T. C. and E. F. vagabonds, commonly calling themselves *Agyptians*, and counterfeiting and changing themselves by their Apparel, Language, and behaviour, like such Vagabonds commonly calling themselves *Agyptians*, and so feloniously continued and remained in the same company at W. aforesaid, in the County aforesaid, and in divers other places in the said County of, &c. by the space of one moneth then next following the said tenth day of February in the year 1652. aforesaid, contrary to the forme of the Statute in that case made and provided, and against the peace, &c.

Another for keeping an unlicensed Alehouse.

Essex.

THE Jurors, &c. do present, That A. B. late of T. C. in the said County of *Essex* Viclor, the first day of *June*, in the year of our Lord God, 1652. and continually afterwards, untill the day of the taking of this Inquest — (or thus — continually for many dayes after, that is to say, untill the first of *July* in the year aforesaid) obstinately, and of his own authority without any admission or allowance of the Iustices of the Peace in the said County, hath taken upon him to keep a common Tipling House, and there the said first day of *June*, and the said other dayes afterwards, commonly and openly did sell Ale and Beer to divers of the people of this Common-wealth, in contempt of, and contrary to the Statute in Parliament of Ed. 6. late King of England, at *Westminster*, in the first year of his Reign, in that case made and provided, and against the peace, &c.

For

*For keeping a Baudy House, &c.**Surr.*

THe Jurors, &c. do present, That *A. B.* late of *C.* in the County of *S.* aforesaid Vitler, such a day and year, &c. at *T.* Hath held and kept in his dwelling House there a common Baudy House, and suffereth many persons suspected, and of ill behaviour and fame, to have carnall knowledge with Whores, to the great grievance of all the Inhabitants there, and to the evill example of others there dwelling, and against the peace, &c.

*For a common Barater.**Surr. β.*

THe Jurors, &c. do present, That *A. B.* late of *C.* in the County of *S.* aforesaid Husbandman, the tenth day of *Jan.* in the year of our Lord God, 1652. at *C.* aforesaid in the County aforesaid was, and yet is a common Barater and Disturber of the Common-wealth, a dayly and open common and turbulent Raylor, Fighter, a sower of Discord among his Neighbourts, so that he hath moved, procured, and stirred up many contentions and quarrells, then, and there, and elsewhere in the said County of *S.* among divers of the people of this Nation, to the great disturbance of the peace, and contrary to the forme of divers Ordinances, and Statutes of the Common-wealth of *England* in such case provided and declared, and against the peace,

In the Kings Bench, Pasc. 3. Car. 3.

A Man was Indicted, that he *suit & adhue est*, a common Barreter, and no place exprest where he is a Barreter, and so no triall can be. *Dodderige* said, if he be a Barreter in one place, he is a Barreter in all places. The Indictment was *per quod*, he did stir up contentions *jurgia*, and no place named where he did stir up *jurgia*, contentions; and it was said, that in that case the place was very materiall, and so the Indictment was quasht for want of setting forth the place where he did stir up contentions.

For Inmates.

The Jurors, &c. do present, That *A. B.* late of *C.* in the County aforesaid Tayler, being owner of a Cottage now in his Occupation, the twentieth of July, in the year of our Lord God 1652. at *C.* in the County, did place one *D. E.* an Inmate in the Cottage aforesaid; and the said *D. E.* with the said *A. B.* in the cottage aforesaid, did there inhabit, from the said twentieth day of July, in the year aforesaid, by the space of two Moneths then next following; and the said *A. B.* did permit; and voluntarily suffer the said *D. E.* an Inmate as aforesaid, with him the said *A. B.* to dwell by the space of two Moneths, contrary to the forme of the Statute, &c. and against the peace, &c.

For using unlawfull Games.

The Jurors, &c. do present, That *A. B.* late of *C.* in the County of *Southampton* Vtler, the second day of June, in the year of our Lord God, 1652. and
G continually

continually after the said second day of *June*, in the year aforesaid, untill the twentieth day of the Moneth of *July*, in the year aforesaid, at *C.* aforesaid in the County aforesaid, a common Bowling Alley for his own proper gaine, and then and there to play with Bowls unlawfully did keep and maintaine, contrary to the forme of a Statute in Parliament, in the 33. year of *H. 8.* in that case made and provided. And that *I. S.* late of *C.* aforesaid, in the County aforesaid, and three other persons unknowne, the said second day of *June*, in the year aforesaid, the said common Bowling Alley did frequent, and then and there with Bowls unlawfully at Bowls did play, contrary to the form of the Statute aforesaid, and against the peace, &c.

For Fighting in a Church-Yard.

Montgomery.

THe Jurors, &c. do present, That *G. F.* late of *H.* in the County of *M.* aforesaid Yeman, the tenth day of *May*, in the year of our Lord God, 1652. at *H.* aforesaid, in the County aforesaid, in the Church-Yard of the Parish Church of *H.* aforesaid, maliciously did draw his Dagger upon one *I. S.* of *H.* aforesaid, in the County aforesaid, with intent to strike the said *I. S.* with the said Dagger, against the peace, and contrary to the forme of a Statute made in Parliament, in the sixt year of *Ed. 6.* late King of *England*, in that case made and provided.

For

*For negligent keeping of Fire, whereby the
Neighbours goods burned.*

Denbigh.

THe Jurors, &c. do present, That whereas by the Law and Custome of the Kingdome of England, hitherto used and approved, every Man and Woman of the said Kingdome is bound to keep their Fire safe and secure, least by default of the due and safe keeping of such Fire any damage should happen to any of his or her Neighbours. Nevertheless one A. B. of C. in the County of D. aforesaid, the first day of May, in the year of our Lord God, 1652. was seised of a Messuage in the aforesaid Town of C. in his demesne, as of Fee, in which Messuage the said A. then, and there dwelling, which A. then and there did so negligently and carelessly keep his Fire; that for want of due keeping of his Fire, the Goods and Chattells of T. F. that is to say, ten loads of Timber, of the said T. F. at C. aforesaid, in the County aforesaid, to the value of ten pounds in the house of the said T. F. then being, and the house and Stable of the said T. F. to the said Messuage adjoyning, were then and there burned, to the great damage of the said T. F. and contrary to the Custome, &c.

For stopping of a Common High Way.

Darby ff.

THe Jurors, &c. do present, That whereas within the Village of S. in the County of D. in a certaine place called *Aldbury*, there is, and by all the time whereof the memory of man is not to the contrary, there hath been a common Kings

high Way leading from the Town of H. in the County aforeſaid, unto the Town and Market of O. in the ſaid County, from the ſaid Town of H. unto the ſaid Town of O. by all the ſaid time, as well to ride and go, and with their Carts and Carriages to paſs, as alſo their Cartell to drive and from thence back again unto the ſaid Town at all times of the year at their will and pleaſure; Nevertheless one B. H. late of S. aforeſaid, in the County aforeſaid Eſquire for his own private gain and Commodity deviſing and intending to ſtop up the ſaid way the day of in the year of *ſc.* 1632, and at divers times as well before as after with force and armes *&c.* at S. aforeſaid in the County aforeſaid, a certain Ditch over-thwart the ſaid common High way, on the part of the ſaid High way, which extendeth between the Pariſhes of O. and A. and the ſame with hedges and gates hath ſhut up and incloſed, and keepeth the ſame ſo incloſed. So that the people cannot have and enjoy the ſaid way, either to ride or go, or with their Carts and Carriages, or to drive their Cartell in ſuch manner as they were wont to have and enjoy the ſame, to the great diſturbance of the people, and againſt the peace, *&c.*

For enclosing an High Way.

Essex.

THe Jurors, *&c.* do preſent, that A. B. late of C. in the County of E. Gent. the day of in the year. *&c.* part of the common High Way, leading from W. unto S. in the County aforeſaid, that is to ſay, one Roode of Land, parcell of the ſaid High way, with Hedge, did incloſe and ſhut up, and the ſame way ſo incloſed from the aforeſaid day

day of untill the day of the taking of this In-
quest into Pasture did convert; and doth keep, to
the great damage, and annoyance of all the people
of this Nation, dwelling neer the same, whose
right it is to go that way, and contrary to divers
Statutes, &c. and against the peace, &c.

For stopping up an usnall way.

Lanc.

The Jurors, &c. do present, That whereas R. N.
is seised in his demesne, as of Fee, of and in two
Acres of Lands, with the Appurtenances in M. in
the County of L. And that he and all those whose
Estate the said R. N. of and in the Tenements a-
foresaid, with the Appurtenances, have had and
ought to have, by all the time whereof the me-
mory of Man is not to the contrary, a certain way
in M. aforesaid, as well on Horseback as on foot,
and with all, and all manner of Carts and Carri-
ages, from the Tenements aforesaid, through and
over a certaine parcell of Land in M. aforesaid, in
the County aforesaid, now in the Occupation of
R. C. unto the Kings high way in M. aforesaid cal-
led, &c. And to drive and redrive all, and all
manner of Cattell from the Tenements aforesaid
through and over the said parcell of Land, in the
Occupation of the said R. C. unto the aforesaid
Kings High way, and from thence, to the aforesaid
Tenements, with the Appurtenances at all times at
his and their pleasure.

Nevertheless one R. C. late of M. in the Coun-
ty of *Lanc.* Husbandman, and Jane C: late of M.
aforesaid, in the County aforesaid Spinster, Wife
of the said R. C. the day of in the year
&c. at M. aforesaid, in the County aforesaid, by

the direction and command of R. H. of S. in the said County Esquier, with force and Armes, in and upon the said R. N. and T. H. the Servant of the said R. N. in the peace of God, &c. then being, and in and through the said way about their necessary businesse labouring and going, did make an assault, and a certaine gate at the entrance into the said parcell of Land in the possession of the said R. C. over-whart the way aforesaid, did make, erect, and keep; By means whereof the said way is wholly stopped up. So that he the aforesaid R. N. cannot have nor make use of the said way in manner aforesaid nor with his Carts and Carriages, nor drive and redrive his cartell, to the great hurt of the Freehold of the said R. N. and to the great damage of the said R. N. and against the peace, &c.

For turning of a water course.

THe Jurors, &c. do present, that T. R. late of S. in the county of M. Yeoman, the day of &c. and at divers other dayes and times, aswell before as after; At S. aforesaid in the county aforesaid a certaine Water course did stoppe and turne, by means whereof the said Water course did flow upon the soile, and Free-hold of T. F. and G. F. to the great damage of them the said T. F. and G. F. contrary to the forme of the Statute, &c. and against the peace &c.

For a Bridge in decay.

Kent.

THe Iurors &c. do present, that a publicke and common Bridge, being in the Kings high way upon

upon the River of M. within the Parish of A, in the County of Kent, commonly called A. Bridge, is, and for many years now last past hath been very ruinous, and in great decay, for want of reparation, so that the people of this Nation cannot, nor dare not without danger of their lives pass over the said Bridge, either on Foot or on Horseback, or with Carts or Carriages, to the great and common hurt of the Neighbours and others of the said Country whom it concerneth, by reason of their business to go and come that way: And they further say; That it is altogether unknown, what Person or Persons, what Lands or Tenements, what Bodies corporate or politique, the said Bridge, or any part thereof, of right, or by ancient Custom ought to reparaire or amend the same, &c.

Trin. 21. Jac. in the Kings Bench.

Bridges and Nicholls, were indicted for not repairing of such a Bridge, and the Indictment was, *Debent & solent reparare pontem*; It was moved, That the Indictment was not sufficient, because it is not alledged in the Indictment that the Bridge was over a Water, and therefore not needfull to be amended.

1. It appeared not in the Indictment that at the time of the Indictment that the Bridge was ruinous and decayed.

That Bridges and Nicholls, *Debent & solent reparare pontem*, and it is not shewed, that their charge was, *Ratione tenuræ*. 21. Ed. 4. 33. where it is said, That prescription cannot be, that a common person ought to reparaire a Bridge, unless it be *ratione tenuræ*, but it is otherwise in case of a Corporation.

Pasc. 3. Car. in the Kings Bench.

SErjeant Hoskins was Indicted for not paying the Kings High way in St. Johns Street, in the County of Midd. *ante tenementa sua*, and in the Indictment it is not shewed how he came chargeable to pay the same.

Nor was it shewed, that he was seised of any house there, nor that he dwelt there, nor was it averred that he had any Tenement there. The opinion of the Court was, That the Indictment was uncertaine and quashr.

Trin. 15. Car.

UPon an Information in the Kings Bench against the Inhabitants of *Shoreditch*, It was said by the Court, That by the Common Law the Inhabitants of a Parish ought to reparaire all High wayes lying within their Parish, if prescription do not binde some particular persons thereto (which is not in this Case) and some of the Inhabitants would have been Witnesses to prove, that some particular Inhabitants lying upon the High way had used time out of mynde, to reparaire it, but were not permitted, because they were Defendants in the Information.

For not reparairing a High Way, on the Statute of 2. & 3. P. & M. & 5. Eliz.

Nott. ss.

THE Jurors do present, That part of the Kings High way at E. in the County of Nott. in quantity about twenty yards, lying and being over against certaine Lands and Tenements of I. C. is
very

very ruinous for want of reparation of the Causey there, to the great and common hurt of the people of this Nation; and that the said I. C. ought to make and reaire the said Causey upon his own proper costs and charges, according to the forme of the Statute.

Trin 15. Car.

MAny indictments were exhibited severally against severall men, because each by himselfe suffered his door to be unrepaired. And it shewed in the Indictments that every one of them ought to reaire, and thereupon it was moved that the Indictments might be quashed; But the Court would not quash them without certificate that the parties had repaired their doores, but it was granted that Proceſs should be stayed upon motion of Counsell that reparation should be presently done, but at the same time many Indictments for not repairing the High-way, which the Parishioners ought to have repaired according as it was found by verdict the same Term were quashed for the same defect, for that it was joynt, one only, whereas there ought to have been severall Indictments, but they were quashed for the first defect.

Mich. 17. Car.

AN Information was brought in the Kings Bench for the King against *Edgerly Carrier of Oxford*, because that where by the Custome of *England* no Carrier or other person ought to carry above 2000. weight and that with a Waggon having but two wheelles, and but with 5. horses: That the Defendant had used for the space of a yeare last past to drive *quoddam Gestacorium vare*, a Dragg or Waggon

Waggon, *cum quatuor vasis & cum in usitato numero equorum, viz.* with twelve horses between Oxford and London, and had used to carry with it 5000 weight, that he had digged and spoiled the way in a Lane, called *Lobbe Lane*, that the people could not pass. To which the Defendant pleaded not guilty, and he was found guilty by the Verdict, and many exceptions were taken to the Information, all were over-ruled by the Court, and then the Question was, Whether the Carrier should repaire it at his own charge, or should be Fined for the Nusance, to the Common-wealth,

And it was agreed that he should be Fined and Imprisoned, and it was considered, what Fine should be set upon him; Judge *Mallet* agreed foure Marks but the other Iustices thought that too little, and adjourned the setting of the Fine.

For the mending of a Way.

Leicester:

THe Iurors, &c. do present, That the Kings Highway within the Town of P. in the County of P. of L. between the Market Towns of H. and R. in the County aforesaid, containing in length about one hundred Roods and more, is very foule and miry, for want of Reparation, so that the people whom it concerneth to go and come that way cannot pass that way without great danger; And that the Inhabitants of the Town of P. ought of right, and by ancient Custome to repaire the same, and have accustomed so to do.

For not comming to work at High wayes.

Buck.

THe Jurors, &c. do present, That whereas on Tuesday in the Easter week now last past, that is to say, the day of in the year, &c. A. B. being then Constable of the Town of C. in the County of B. aforesaid having called unto him many of the Parishioners of the said Parish of C. then and there did choose I. &c. and R. N. two honest men of the said Parish to be Surveyors for one whole year then next following, for repairing and amending of the Kings High Wayes, within the said Parish of C. leading from Marker Town to Market Town, and did also then name and appoint six dayes, viz. the first, second, third, fourth, fifth, and sixt dayes of the Moneth of May then next comming for the amendment of the said wayes, and namely for the amendment of that way which is between *Stony-Furlong*, and *Foule-Acre*: And of those six dayes, so by them as aforesaid, named and appointed, they did afterwards, that is to say, upon the Lords day the said Easter week next following, did give open and publique notice in the said Parish Church of C. in the said County of B. Nevertheless T. W. being then a Parishioner of the said Parish of C. &c. in the County aforesaid, and having, and Occupying a Plough Land, of Arable Land, did not at any of the said first, second, third, foure, fift, or sixt dayes of the said Moneth of May aforesaid, at all, finde or send a Wain, or Cart furnished with Horses, Oxen, or other Cattle, and necessary instruments, according to the manner of the Country there, nor any able men towards the repaying and amending of the said

said Wayes, or any of them, or any part or parcell thereof, but from the same, then and there, did willfully make default, contrary to the form of divers Statutes, &c.

Another for stopping a usuall Way.

Dorset. ss.

THE Jurors, &c. do present, That A. B. late of A. in the County of D. Gent. the day of in the year at C. in the said County of D. a certain usuall way, leading from the Mansion house of I. G. Gent. unto the Kings high Way, lying, and being between M. B. and I. G. unjustly and unlawfully did stop up, and would not suffer the said I. G. and his Servants to have, use, and enjoy the said usuall way as they ought, and as from the time, the memory whereof is not to the contrary, they had used to do, but hindred, and with force and armes still doth hinder them, as aforesaid, to the great damage of the said I. G. and against the peace, &c.

Mich. 13. and 14. Eliz.

ONE W. D. was arraigned in the Kings Bench up on an Indictment of a *Girl* of seven years, and not above, (*scil.*) *quod ipsam felonice rapuit & carnaliter cognovit.* And he pleaded *not guilty.* And a *venire facias* was awarded, and a Pannell returned, and three of the Jury-sworne, and then he pleaded that he was a *Scot* borne, and prayed his Trial *per medietatem lingue*; and the opinion of the Justices of both Benches was, That he should not have it, because a *Scot* was never accounted here for an Alien, but rather a Subject; and also the *Scottish Language*

Language is no strange Language but meer *English*, whereupon he was tried, and upon good Evidence was found guilty, yet the Court doubted of the Rape in so tender a child, but if she had been nine years or above, it would be otherwise. *Dyer, 304.*

For taking away of a Mayden out of another mans Custody.

THE Jurors, &c. do present, That whereas by a Statute in Parliament of King P. and Q. M. in the fourth and fifth year of their Reigns, among other things it is ordained: That if any person or persons, being above the age of fourteen years, after the first day of *April*, in the years aforesaid, shall unlawfully take and lead away, or cause to be taken or led away any Mayden or young Woman unmarried, within the age of sixteen years, being from, or out of the possession, and against the will of the Father or Mother of such Mayden or young Woman, or of, or out of the possession, and against the will of such person or persons, as then shall happen to have by any lawfull wayes or means the ordering, custody, education and government of any such Mayden or young Woman, That then every such person or persons so offending, being by order and due course thereof attainted or convicted (other then such person or persons of whom such person taken away did hold any Lands or Tenements by Knights Service) should have and suffer imprisonment of their Bodies, by the space of two whole years, without bayle or mainprise, or otherwise should pay such Fine for his or their offence as should be assessed by the Councell of the Kings Highness, his Heirs or Successors in the Starr-Chamber at *Westminster*, as in the said Statute

Statute is more at large contained; Nevertheless one R. S. late of G. in the County of D. Gent. the day of in the year, &c. the said R. S. being then above the age of fourteen years, nor weighing the said Statute, nor fearing the penalty in the same Statute contained, at L. in the said County of D. one I. B. one of the daughters of L. B. declared, within the age of sixteen years, that is to say, of the age of fourteen years, to which I the said L. B. by his last Will and Testament in Writing, did give, and bequeath for the benefit and marriage of the said I. one hundred Markes of lawfull money of *England*, and the Government and Marriage of which I. B. by the aforesaid Testament and last Will of the said L. B. to one H. H. was lawfully committed, the said C. S. with force and armes, the day, place, and year aforesaid, being found from the Possessions of the said H. H. against the will of the said H. H. unlawfully did take and carry away, contrary to the form of the Statute, and against the peace, &c.

For tracing Hares in the Snow.

THe Jurors, &c. do present, That A. B. late of C. in the County of S. Husbandman, the day of, in the year, &c. at G. aforesaid, in the County aforesaid, the Snow being, and lying then and there upon the ground, one Hare in the Snow, with one Dogg called a &c. did finde, trace, and course, destroy and kill, contrary to the forme of the Statute, &c.

*For Hawking in Corne upon the Statute of
23. Eliz.*

The Jurors, &c. do present, That A. B. late of
C. in the County of L. aforesaid Gent. the
day of in the year, &c. at C. aforesaid in the
County of L. aforesaid, the Close of G. H. with
force and armes did break and enter, and then
and there in the ground of the said G. H. that is to
say, into three Acres of Land, in which the Barly
of the said G. H. to the value of forty shillings,
was growing at such time, as the said Barly was
Eared, did Hawk, and with his doggs, commouly
called Spaniells, did Hunt, contrary to the forme
of the Statute, &c. and against the peace, &c.

*For getting of Quick-Wood.**Berks.*

The Jurors, &c. do present, That A. B. late of
C. in the County of B. Husbandman the
day of in the year, &c. at C. aforesaid, in the
County foresaid with force and Armes, the Close
of T. F. did break and enter, and then and there
two burdres of young Quick-wood, to the value of
two shillings, did root up, take, and carry away,
and other harmes to the said T. F. then and there
did, to the great damage of the said T. and against
the peace, &c.

For

For chasing Sheep With Doggs.

THe Jurors, &c. do present, That W. F., of D. in the County of L. Husbandman, and O. F. late of D. aforesaid, in the County aforesaid Labourer, the day of — in the year, &c. at D. aforesaid, in the County aforesaid, with force and armes one Dogg called a Greyhound, and another Dogg called a Curr, who used to bite Sheep, did keep, and then and there the foresaid Doggs to chase and bite the Sheep of I. T. there did incourage, that the said Doggs by the said incouragement then and there four Sheep of the said I. T. of the price of forty shillings, did chase, bite, and kill, to the great damage of the said I. T. and against the peace, &c.

For ingrossing Corne, upon the Statute of 5. Ed. 6. and renewed 13. Eliz.

THe Jurors, &c. do present, That A. B. late of C. in the County of S. Yeoman, the day of — in the year, &c. at C. aforesaid in the County aforesaid, ten quarters of Barly, to the value of ten pound of G. T. did Buy and Ingross, and in his hands did keep, with the intent to sell the same again, contrary to the forme of the Statute in that case made and provided, &c.

For regrating Fish and Butter, on the Statute of 5. Ed. 6.

Dorset. ss.

THe Jurors, &c. do present, That A. B. late of C. in the County of Dorset Yeoman the — day

day of — in the year, &c. At B. in the said County of D. in a certain Market, then there holden, for forty shillings, did buy, regrade, obtaine, and procure, and into his possession and hands get ten couple of Lings, and three Firkins of Salt-Butter of one I. F. who the said ten couple of Lings, and the said three Firkins of Butter at the same Market, and there brought the same to sell, and that immediatly afterwards, that is to say, the said day and year, the said A. B. in the full Market then and there at B. aforesaid, in the County aforesaid holden, all the couples of Ling, and the said Firkins of Butter to one F. R. for threescore shillings of lawfull money of England, unlawfully did sell, to the great damage of the Common-wealth, and contrary to the forme of divers Statutes in that case made and provided, &c.

*For Trespass in Corne.**Hereff. ff.*

THe Jurors, &c. do present, That A. B. late of C. in the County of H. Yeoman the day of in the year, &c. the Close of one I. S. at L. in the County aforesaid, commonly called the Barton Close, with force and armes, the Grass, and the blade of Wheat of the said I. S. then and there growing to the value of twenty shillings, with certaine Oxen and other cattell of the said A. B. then and there did depasture, tread down, and consume, and the Ground and Soile of the said I. S. then and there, with a Plough did turne up, whereby the said I. S. all the profit and commodity of his said Ground, did for a long time after loose, and other hurts to the said I. S. did, to the great damage of the said I. S. &c.

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For

For taking Doves:

THe Jurors, &c. do present, That A. B. late of C. in the County of N. aforesaid, Yeoman, the day of in the year, &c. at L. in the County aforesaid twenty Doves of the Dove-house of D. E. price ten shillings, with Nets and other Engines, did take and carry away, by means whereof the said D. E. the flight of his Doves, did utterly loose, and other harmes to him did, to the great damage of the said D. E. and against the peace, &c.

For selling Trees and Under-Wood.

THe Jurors &c. do present, That A. B. late of C. in the County of M. Yeoman, the day of in the year of, &c. with force and armes, that is to say, with Swords, Staves, and Knives, the Close of R. S. at W. did break and enter, and the Grass there growing, to the value of twenty shillings, &c. then and there growing, with certain cattell, that is to say, with Horses, Oxen, Kine, Hogs, and other beasts, did depasture, tread down, and consume. And the Trees of the said R. S. that is to say, ten Okes, to the value of thirty shillings, and Under-woods, that is to say, ten Waine Loads of Under-woods to the value of twenty shillings, then and there growing, did sell, take, and carry away, and other hurt to him the said R. S. did, to the great damage of the said R. S. and against the peace, &c.

For breaking the Close, and taking away Cattel, spoiling the Grass, and the continuance of the Trespass.

Rutland.

THe Jurors; &c. do present, That A. B. late of C. in the County of R. Yeoman, the day of &c. in the year, &c. with force and armes, the Close of S. P. at C. aforesaid, in the County aforesaid did break, and eight Sheep of the said S. P. price forty shillings, then and there found, did take and drive away, and the Grass of the said S. P. to the value of twenty shillings then and there growing, with certain cattel, that is to say, with Horses, Oxen, and other cattell, did eat, tread down and consume, and the Trespass aforesaid, as to the eating, treading down, and spoiling of the Grass aforesaid, from the said day of aforesaid, in the year aforesaid, untill the day of the taking of this Inquest, at divers dayes and times, did continue, and other harmes to him did, to the great damage of the said S. P. and against the peace, &c.

Against a Constable for the escape of a Felon committed unto him.

THe Jurors, &c. do present, That whereas D. K. late of L. in the County of L. aforesaid Labourer, at L. aforesaid, in the County aforesaid Labourer, was taken and arrested, upon suspicion of Felony, that is to say, for the stealing of five pounds in money, numbred of the goods and chattells of G. V. by the said D. in the County aforesaid committed, and for the same Felony was committed by

H 2

A. B.

A. B. Esquire, one of the Justices for the conservation of the peace of the County aforesaid assigned unto R. B. late of W. in the County aforesaid Yeoman Constable there, by him the said Constable to be safely and surely kept, and brought unto the Goale and Prison of the Keepers of the Liberty of *England, &c.* at L. and him the said D. there to deliver to the Keeper of the Goale and Prison aforesaid in the same to be safely and securely kept by the Keeper of the said Goale and Prison aforesaid, untill according to the Law and Custome of the Common-wealth of *England*, in due forme, he should from thence be delivered, that the said R. B. the Constable aforesaid, and R. W. late of *&c.* the day of in the year, *&c.* about ten of the

clock in the forenoone of the same day, at N. in the said County of L. the said D. being in Prison of the Keepers, *&c.* in the custody of the said R. B. and R. W. for the Felony aforesaid, then and there being out of the Prison, aforesaid and being out of the Custody of the said R. B. and R. W. feloniously and willfully did suffer to escape, and to go at large whither he would, against the peace, *&c.*

For Forestalling.

Lane.

THe Jurors, *&c.* do present That whereas A. B. was possessed of two Kine coloured black, of the price of foure pound, as of his proper Goods; That W. R. late of S. in the County aforesaid Yeoman, the said two Kine going to the Faire, at P. to be sold, before they came into the said Faire to be sold, did buy and had of the said A. B. out of the Faire to the Forestalling of the said Faire, contrary to the forme of the Statute, *&c.*

For taking away a Stray.

Rutland.

THe Jurors, &c. do present. That whereas A. B. of C. in the County of R. aforesaid, Esquire, in right of his Hundred of V. in the County aforesaid, ought to have, and he, and all the Lords of the said Hundred, by all the time, whereof the memory of man is not to the contrary, have used to have all Beasts which are called Stray, within the Precinct of the said Hundred; Nevertheless one B. D. late of &c. knowing the same to be true, the day of in the year, &c. at L. within the Precinct of the said Hundred two Bullocks, price forty shillings then and there found, did take and drive away, and other harmes to the said A. B. did, &c. against the peace, &c.

For ingrossing Corne growing.

Northampton.

THe Jurors, &c. do present, That A. B. late of C. in the County of N. aforesaid Yeoman, the day of in the year, &c. did buy all the Barly, to the value of twenty pounds, growing upon twenty Acres of Land at W. in the County aforesaid, with purpose to sell the said Barly againe, contrary to the forme of the Statute, &c.

For refusing to Watch.

Derby. ss.

THe Jurors &c. do present, That whereas A. B. late of C. in the County of D. aforesaid, the first day of June in the year, &c. at L. in: he said
H 3 County

County was by the Constable of the Town of L. aforesaid, commanded to keep watch, together with other the Inhabitants of the said Town of L. within the said Town of L. from Sun setting of the said first day of *June*, untill the Sun rising of the second day of the same Moneth of *June*, next following, according to the forme of the Statute in that case, made and provided. Nevertheless the said A. B. the Laws of this Nation, not regarding at L. aforesaid, in the County aforesaid, the said first day of *June* in the year aforesaid to do and keep watch there, did altogether refuse and deny, and made default contrary to the forme of the Statute aforesaid; By reason whereof the watch within the said Town of L. was not kept, to the danger of the people of the Common-wealth, and against the peace, &c.

For taking an excessive distress.

Devon. ss.

THe Jurors, &c. do present, that whereas in a Statute in Parliament of H. 3. sometimes King of England, holden at M. in 52. year of his Reigne, among other things it was ordained, that distress should be reasonable, and not too grievous, And that he which should make unreasonable and undue distresses, should be grievously amerced according to the access of the said distresses, as in, the said Statute more at large is contained, Nevertheless A. B. late of C. in the said County of Devon Esquier, not regarding the said Statute the second day of A. in the year, &c. two Oxen, price five pound, of the Goods and Chattells of I. A. at N. in the County aforesaid for four shillings in money numbred unreasonably and excessively did distress

distrain and took for a distress. And the foresaid two Oxen, the second day of *A.* in the year aforesaid at *N.* aforesaid in the County aforesaid, in manner and forme aforesaid, the foresaid unreasonable and undue distress, did make, contrary to the forme of the Statute aforesaid, and against the peace, &c.

For taking a distress in the High way.

Rul.

THE Jurors, &c. do present, That whereas in a Statute in Parliament of *H. 3.* sometime King of *England* holden at *M.* in the 52. year of his Reign, it was among other things enacted; That it should not be lawfull for any man then after, for any cause to make any distress out of his own Fee, nor in the Kings High way, nor in the common street without speciall Authority from the King or his Ministers, as by the said Statute more at large is contained. Nevertheless *A. B.* of *C.* in the County of *R.* aforesaid Gent; not regarding the said Statute, nor the penalty therein contained, the second day of *A.* in the year, &c. at *G.* in the County aforesaid, out of the Fee of the said *A. B.* in the common street there two young Bullocks, price three shillings, of the Good and Chattells of *I. P.* then and there in the street aforesaid, being found, and being, did distraine, and for the distress did take, whereas at the time of the distrayning aforesaid, the said *A. B.* was not a Minister of the Keepers of the Liberty of *England*, nor had any speciall authority to do the same, contrary to the forme of the Statute, and against the peace, &c.

For shooting Haile shot in a Hand-Gun.

THe Jurors, &c. do present, That whereas in a Parliament of Ed. 6. late King of England holden at *Westminster*, in the second year of his Reign, It is among other things Ordained and Enacted; That no person under the degree of a Lord of the Parliament should from thenceforth shoot in any Gun at any Bird, or at any other Mark upon any Church, House, or Dove-House, nor that any person should shoot in any place any Haile shot, or more Bullets then one at one time, upon paine of forfeiting ten pounds for every time in which he should offend contrary to the said Statute, and imprisonment of his body by the space of three months as in the said Statute is more at large contained, Nevertheless one I. T. late of &c. not considering the said Statute, nor fearing the penalty therein contained, the day of in the year, &c. in a certain hand Gun charged with powder and haile shot at a certain Duck in a certain Pond in a common Field, called *Nether Field* of D. in the County aforesaid being, did shoot and discharge haile shot then and there at the said Duck, contrary to the forme of the Statute aforesaid.

For breaking and digging the Soile where another hath Common of Pasture:

Lanc.

THe Jurors, &c. do present, That whereas R. B. Gent. the fifteenth day of *July*, in the year of our Lord God, 1649 and long before, and always hitherto, was seised in his demesne, as of Fee, of, and

and in one Messuage, and twenty Acres of Land, in Acres of Pasture, &c. with the Appurtenances in M. in the County of *Lanc.* to which Tenements the said R. B. the said fifteenth day of *July*, in the year 1649. aforesaid. and also long before, and alwayes after, untill this time hath had, and now of right ought to have common of Pasture every year, and at all times of the year, with all, and all manner of cattell in four hundred Acres of Pasture, called the *Hay* in M. aforesaid in the County aforesaid. Nevertheless A, B. late of, &c. R. C. D. &c. and E. F. knowing the premises to be true, contriving and devising how to disinherit the said R. B. of his Common aforesaid the said fifteenth day of *July*, in the year 1649. aforesaid, at M. aforesaid into the Common aforesaid, with force and armes, &c. that is to say, with Spades, Staves and other weapons, did riotously unite, and unlawfully assemble themselves together with intent to disturbe the peace of the Keepers, &c. and so being united and assembled then and there with force and armes, and riotously into the said four hundred Acres of Pasture did break and enter, with intent to dig the Soile of the said four hundred Acres of Pasture and the day of *June*, in the year 1649. aforesaid the soile of the said 400. Acres of Pasture aforesaid did digg and turne up, by meanes whereof the said R. B. his Common of Pasture aforesaid in the said four hundred Acres of Pasture from the said day of *I.* in the year 1649 aforesaid untill the day of the taking of this Inquest hath lost, and other harmes so him did, to his great damage, contrary to the orme of the Statute, &c. and against the peace.

For

For taking Conies in a free Warren in the Night.

THe Jurors, &c. do present, That A. B. late of C. in the County of S. Labourer, the day of in the year of our Lord 1650, with force and armes, that is to say, with Staves, Bills, Bowes and Arrows, and other weapons, as well offensive at defensive, the Parke or free Warren of D. E. at C. aforesaid in the County aforesaid, about the houre of ten of the clock in the night of the same day, did break and enter, and in the same Parke, or free Warren, with Harriers and Pursnetts, without the Licence of the said D. E. did hunt, and forry Conies, to the value of three shillings fourpence, of the goods and chattells of the said E. D. then and there found, did take and carry away, to the great damage of the said D. E. and against the peace, &c.

For conspiracy of Bakers touching making of Bread.

THe Jurors, &c. do present, That A. B. C. D. E. F. and G. H. of I. in the County of L. Bakers, the day of in the year of our Lord God, 1651, at I. aforesaid, in the County of L. aforesaid, did meet together, and conspire, and mutually between themselves agree, that a penny Loafe of cleane Wheat (by them, or any of them from thence forth to be made and sold) should weigh but two pound and six Ounces of Troy Weight, what price soever thereafter the price of a Quarter of Wheat should be, in contempt of the Keepers of the Liberty of England, and the great grievance of the poor people of

The Lay-mans Lawyer.

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of the Common-wealth, and contrary to the forme
of the Statute in that case, made and provided.

For pulling out of Eyes.

THE Jurors, &c. do present, That A. B. of C.
in the County of E. Tinker, the day of
in the year, &c. in a certaine place at C. afore-
said in the County aforesaid, called with force
and armes, in and upon one D. T. of C. aforesaid,
in the County aforesaid Yeoman, in the peace of
God and the Keepers, &c: being, did make an as-
sault, and then and there of his malice forethought
with his Fingers, and the nailes of the Fingers of the
said A. B: the eyes of the said D. T. feloniously did
digg and pull out, against the peace, &c. and con-
trary to a Statute in Parliament, heretofore held at
Westminster in the County of Midd. in the fifth year
of the Reign of Hen. 4. King of England, &c.

Salop. B.

THE Jurors, &c. do present, That whereas by a
Statute in Parliament of Hen. 4. sometime King
of England held at Westminster, in the fifth year of
his Reign, It was Ordained, That Malefactors
which should cut out the Tongues, or pull out the
Eyes of any of the Leige people of the King, the
same being found, and in due manner proved to be
done of malice forethought, should incur the paine
of Felony, as in the said Statute is more at large
contained: Nevertheless one A. B. late of C. in the
County of S. aforesaid Labourer, not fearing the
penalty in the said Statute contained, the day
of &c. in the year, &c. with force and armes
feloniously, and as a Felon of the Keepers of the
Liberty of England, lying in waite in his malice
force

forethought, came to H. in the County aforesaid, and in and upon one N. M. then and there in the peace of God, &c. being, did make an assault, and him did beat, wound, and with a Knife of the value of six pence, which the said A. B. in his right hand then and there held, the Tongue of the said N. M. then and there feloniously did pull and cut out, against the peace, &c.

*For Hunting in a Parke in the Night with
Dogs and Buck-stalls.*

Stafford ff.

THe Jurors, &c. do present, That A. B. of L. in the County of S. aforesaid, C. D. of L. aforesaid, in the County aforesaid Gent. and R. B. of L. aforesaid Yeoman, the day of June, in the year, &c. about the hour of twelve of the clock in the night of the same day, having gotten unto them many other Malefactors, disturbers of the peace, to the Jurors unknown, with force and armes, that is to say, with Staves strengthened with Iron, Bowes and Arrows, Swords and Daggers, and other weapons, as well invasive as defensive. The Close and Parke of F. G. Esquire at H. in the said County of S. unjustly did break and enter; and the Deere of the said F. G. then and there in the said Parke couchant and feeding, with three Grey hounds and a Buckstall which in the said Parke they held injuriously did hunt and chase, and one Buck then and there with the Greyhounds aforesaid riotously did take, kill, and carry away, against the peace, and contrary to the forme of the Statute, &c.

No man shall be taken or imprisoned for *Vort* nor *Venison* unless he be taken in the manner, or indicted; in which Case he shall be Bayled by the Gaurdian

Guardian of his Office, or otherwise by Writ.
Fit. Nat. Br. fol. 67.

For a Labourer keeping a Greyhound.

Stafford. II.

THe Jurors, &c. do present, That A. B. late of
C. in the County of S. aforesaid Labourer,
(being a Lay-man) from the Feast of St. Bartholo-
mew the Apostle, in the year of our Lord, &c. con-
tinually until this day of the taking of this Inquest,
at C. aforesaid, in the County aforesaid, had, and
did keep a Greyhound, to hunt and chase Hares
and Conies, And that the said A. B. the 18. of
August. in the year aforesaid, one Coney of
the value of foure pence in a certaine Close of I. S.
called the *Cony Close*, within the Parish of C. afore-
said in the County aforesaid, did hunt and kill;
whereas the said A. B. never had Lands or Tene-
ments of the clear yearly value of forty shillings, In
contempt of the Keepers of the Liberty, &c. and
against the peace.

*For using more Trades then one, upon the Sta-
tute of 3. Ed. 3.*

THe Jurors, &c. do present, That whereas in the
Statute in Parliament of Ed 3. late King of
England after the Conquest, in the third year of
his Reign holden; among other things it is Orda-
ined and Enacted, That Artificers and people having
a Trade or Occupation, should hold himself to his
own Art, and that no man should use or exercise
any other then that which he hath chosen; And
if any man should do otherwise, he should be pu-
nished by Imprisonment of his body, and should
pay

pay Fine and Ransome to the King, as in the said Statute is more at large contained; Nevertheless, one A. B. of C. in the County of S. aforesaid Milner, the Statute aforesaid not regarding, nor fearing the penalty therein contained, from the second day of *July*, in the year of our Lord God, 1650. untill the tenth of *August*, in the year 1651. as well the Art of a Milner, as the Art of a Baker at C. aforesaid did keep, &c.

For seducing an Apprentice from his Masters Service.

Stafford. ss.

THe Jurors &c. do present, That I. H. of W. in the County of S. Baker, was retained as a Servant and Apprentice unto R. B. of W. aforesaid Baker, the tenth day of *May*, in the year of our Lord God, 1652. for the terme of five years then and yet to come. Nevertheless I. W. late of W. aforesaid in the County aforesaid Baker, knowing the Premises to be true, the 20th. day of *October*, in the said year 1652. the same I. H. at W. aforesaid in the County aforesaid from the said R. B. did craftily and fraudulently entice and seduce W. whereby the said R. B. the service of the said I. H. did wholly lose, to the great damage of the said R. B. and against the peace.

If a man retaine a Servant of another man, not knowing that he is retained in another mans Service, he shall not be punished for it, if he keep him not after notice thereof. *Fitz. H. Nat. Bri. fol. 168.*

If a man be retained in service, and go out of his Service as a Vagrant, another may compell him to serve, because he is out of service. *Idem. Ibi:*

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The Lords of Towns, or the Justices of the Peace may command Vagrants to Prison if they will not serve, and they command the Goaler to let them go at large without any other Writ, *Idem. lb.*

If a Servant be retained in Winter to serve, and after he will depart from his Master in Summer, and to serve in another place, then he whom he served in Winter shall have a Writ to compell him to serve him in the time of Summer. *Idem. fol. 168. A.* the forme of which Writ is there set downe.

An Infant of twelve years shall be bound by his Covenant to serve in Husbandry. *Idem. lb. D.*

And a woman of that age shall likewise be bound to serve her Covenant. *Idem.*

Of which you may see more there.

If a Servant will not serve his Master by the Statute 24. Ed. 3. ca 9. he shall be arrested and committed to the Goaler, and if he let him go at large, he shall forfeit ten pound to the King, and five pound to the party; and if the Goaler let such party go at large, the party who would have retained him shall have an action of debt against the Goaler. *Fitz. H. Nat. Br. fol. 122. A.*

Of Conspiracy and Confedracy.

TWO were Indicted of Confedracy, each of them to maintaine the other, whether their matter were true or false, and although nothing was supposed to be put in ure, yet the parties were put to answer, forasmuch as the thing was forbidden by the Law. 27. lib. Ass. Pla. 44.

In the next Article of which Book it is said, that enquiry shall be made of Conspirators and Confederators, which binds themselves together falsely to indict or acquit.

The incidents of which Confedracy *vid.* Exposition of the Terms of the Law. fol. 73.

A man may have a Writ of Conspiracy upon an Indictment before any Mayor or Bailiffe of any City or Burrough, who have power to deliver a Goal within their City or Burrough, if he be acquitted before them, for this acquittall dischargeth him of the Felony, but a Writ of Conspiracy lieth not against the Indictors themselves. *Fitz. Nat. Br. f. 115. C.*

If a man be falsely Indicted of Felony, and afterwards by Act of Parliament a generall Pardon is granted of all Felonies, &c. Now the party shall not have a Writ of Conspiracy, although he will plead to the Indictment and is acquitted, and he will not plead the Act, &c. because his life was not in jeopardy, and the Felony was discharged by the Act. *Fitz. Nat. Br. Ibidem. G.*

If a man be Indicted or appealed of Treslon or Felony, or Trespas in a forraine County, &c. and be acquitted thereof, he shall have a Writ of Conspiracy against him who procured him to be Indicted or appealed. *Stat. 8 H. 6. cap. 10.*

If the principall, and one as accessory be Indicted of Felony, and were taken and arrested, and the principall is Indicted—now for this the accessory is discharged, and shall thereupon have a Writ of Conspiracy against them who did conspire to Indict him. *Fitz. Nat. Br. fol. 115. A.*

Mich.

Mich. 17. Car.

A Man was bound to keep a Parish harmeles from a Bastard Child, and for not performance thereof, the Obligee brought an action of debt upon the said Bond, and the Defendant pleaded, That he had saved the Parish harmeles; The Plaintiff replied, and shewed, that the Plaintiff was warned before the Justices of the Peace, at the Sessions of Peace, and was there Ordered to pay so much for the keeping of the Child; and because the Defendant had not saved him harmeles, &c. The Defendant pleaded *nil tiel record*. upon which the Plaintiff demurred, and here were two things resolved. 1. That the plea *nil tiel record*, is not good, because that an Order of the Sessions of the Peace is a Record. 2. Judgement ought to be given for the Plaintiff, because the Defendants Barre was not good, in that he hath pleaded in the affirmative that he hath saved the Parish harmeles, and doth not shew how, as he ought to have done, but he ought to have pleaded *non dum inficatus*, which had been good without further shewing.

Though this matter be not meeely Criminnall, nor seems to concerne the Peace, yet because it hath some relation to the Justices who are the Conservators of Peace, I think it was not altogether improper to insert it.

And now having made a collection of sundry Presidents of Indictments, some of which may not perhaps hold Water, nor abide the Criticismes of the Law; I have therefore thought good, for the benefit of such whom it may concern, to set down some Judgements taken out of the Reports of some of the grave Judges, concerning some defects in Indictments and Appeals, upon which they have been quashed, and some against which exceptions have been taken, and yet adjudged to be good; and some upon which no resolution was given upon the Exceptions, whereby the variety of Opinions may be seene.

Mich. 2. Jacobi in the Kings Bench.

SIr Henry Danvers was Indicted by the Coroners Inquest for the death of Henry Long. which Indictment saith, That the said H. D. *Quoddam tormentum vocat adag ad valenciam 6. s. 8. d. cum pulvere & pelletto onerat*, charged with powder and a Bullet of lead, &c. *felonice voluntarie, & ex malitia sua præcogitata exoneravit*, Anglice did discharge, *ans idem H. L. ad tunc cum pelletto plumbeo pred. unum mortale vulnus in & super anteriorem partem corporis ipsius H. L. subter sinistram mamillam ipsius H. L. totaliter penetrans in & per corpus dict. H. L. de quo quidam vulnere idem H. L. instanter obiit.*

Upon this Indictment the said Sir H. D. was outlawed

lawed, and brought a Writ of Error to reverse the outlary, and six Erros were assigned, five whereof were not allowed, and therefore I forbear to mention them. But the sixth was the maine Objection, which was, because in the Indictment the word *percussit* was wanting; the words of the Indictment being, That *predict. H. D. quoddam tormentum cum pelletto plumbeo onerat, &c. in & super ipsum H. L. exoneravit dans eidem H. L. ad tunc & ibidem cum pelletto plumbeo pred. extra tormentum pred. per ipsum demisso unum vulnus mortale.* And it was said, that albeit the word *percussit* was wanting, yet here was tantamount, and in the rule of the Law and Reason, *non refert quid de equipollentibus fiat*; and for that it appeared, that *H. D. tormentum cum pulvere & pelletto plumbeo pred. in ipsum H. L. exoneravit dans eidem H. L. &c. cum pelletto plumbeo, &c. unum vulnus mortale*; by which it appeared to the Court that the said *H. D.* was the cause of the wound, and upon the matter, gave (in this manner) the wound, and it was said, That *percussit* is not properly said, but when one with his hand, or with some weapon which he holds in his hand, strikes another, and not when one gives a wound by a meane, as out of a gun with a Bullet, or of a Bow with an Arrow, the Verb *percutio* being derived or compounded (as it was said) of *per* and *quatio*; but it was nevertheless resolved by the whole Court, that for this cause the Indictment was insufficient, the further reasons, whereof you may see in the fifth part of Sir Ed. Cookes Reports fol. 120. in fine.

Pasc. 23. Hen. 7.

SCOTT came to the Barre, and shewed, how one Richard Lewsam was indicted, for that he ap-
 1 2 pealed

led, and named himself to be servant to Sir *Mathew Brown* Knight, against the forme of the Statute made in the time of the King that now is, and upon this Indictment moved the Court that the same was not good, because he shewed not in the Indictment the place where he named himself to be his servant, and for this cause the Indictment was not good, in the Opinions of *Fincux, Tremaine, and Brudenel* Justices. *Kelwayes* rep fol 98.

Trin. 23. Hen. 7.

ONE was indicted that such a day and year at *Mid-Hurst* in the County of *Sussex* *vi & armis clausum ipsius David Owen militis* fregit & duos retes ipsius David ad valent. &c. apud *Mid-Hurst* pred. felonice cepit & asportavit; and when the prisoner was arraigned at the Barre, the said Sir David put in an Appeale upon this Indictment by Serjeant *Grevill*, and declares, that upon the Bill of Appeale, which was made according to the words of the Indictment; Whereupon *Carill*, who was of Councell with the Felon, defends the wrong, and force, and all that was supposed to be against the peace &c. And when he came and demanded Oyer of the Bill, he said that the Indictment is not good, upon which the Appeale is founded, because that no day is limited in the Indictment when the Felony was done, there is no day limited but for the Trespass done, which shall have no relation to the Felony. And also *Retes* is no Latine word upon the declining, but if it had been false Latine it might peradventure have been amended.

To the first point *Grevill* said, that it was good, and all the Court agreed, That if the Indictment were *Retes vocant nets*, so that it might have perfect sense

sense it had been good, and the Chiefe Justice thought, for that the word *Retes* could have no other construction nor sound to any other thing but *Nets*, that therefore, it therefore was good; and the Opinion of the Court was, That for the variance between the Appeale and the Indictment for the surplussage, that the Appeale was good, and thereupon pleaded not guilty, *Kel. Rep. fol. 100.*

*An Outlary avoided upon an Indictment,
Mich. 27. H. 7.*

Giles Brugges of Coverley in the Countie of Gloucester Knight, who by the name of Giles Brugges late of the Parish of St. Martins in the Fields, in the County of Midd. Gent. by John Pauncefoote Sheriff of the County of Gloucester by vertue of the Kings Writ to him directed, was taken and Arrested, and being in prison, brought to the Barr, was committed to the Marshall, and being presently demanded what he could say for himself, why they should not proceed to the execution of the Outlary; he said, That he is, and at the time of the said Indictment taken, upon which the Outlary aforesaid issued, and also before the time of the pronouncing of the said Outlary and before, and long after was, and yet is, Giles Brugges of Coverley in the said County of Gloucester Knight, and by that name, and surname by the same time was alwayes called and known; And prayed Judgement, that he, as well from the Outlary, as from the said Indictment might be discharged, and was by the Court dismissed. *Kelw. Rep. fol. 101.*

For breaking Prison.

IN the Kings Bench, A. was Indicted for Felony, for that where a Woman was committed to the Goale for Felony, and strong Fetters upon her leggs; the said A. feloniously came, and brook the prison, such a day and year, and opened the Lock of the said Fetters, and abetted and commanded the said Woman to go at large. And for as much as by the said Indictment it did not appear, that the same woman went away out of the prison, or escaped out of the prison, it was adjudged no Felony, For if a man come to a Prison, and set open the prison door, and saith to the Prisoners which are within, come forth of Prison, and none of them escape, it is not Felony, but if any Prisoner escape, then that man that so did is a Felon, *Mich. 21. Hen. 7.*

Indictment in a Leete Quashed.

ONe was Indicted before the Steward, of a Leete of Felony done in Dale; and because the Indictment did not suppose Dale to be within the Jurisdiction of that Court, the party was dismissed by the advise of all the Justices. *22. H. 7.*

Pasc. 5. Ed. 6.

IN the Kings Bench, A man was Indicted of Murder, and the Indictment was *De eo quod ipse tali Die & Anno, &c. apud C. in predi. Com. B. insultum fecit, & ipsum B. cum quodam cultello precii & ipsum D. felonice percussit, occidit, &* *murdravit*

murdravit, without saying *ex malitia præcogitata*, or without shewing in certaine the place where the Murder was done, or such words *ad tunc & ibidem*. And by the Opinion the Indictment was void for default of the place, because the assault might be in one place, and the murder in another, for they are of divers natures. But not for the other cause *scil. ex malitia præcogitata*, for *murdravit ex necessitate* implies it, as *furatus est* implies Felony. *Dier fol. 68.* yet *vid. fol. 99.* where it is said, words *ex malitia sua præcogitata* ought to be in the Indictment. *Quere.*

Mich. 13. and 14. Eliz.

AN Indictment was removed in the Kings Bench (*scilicet*) *Quod ex malitia præcogitata A. B. in C. D. insultum fecit & ipsum C. D. felonice percussit, dars in unam plagam mortalem de qua languebat per 7 dies & 3 die ex plaga pred. obiit.* without saying *.Et sic pred: A. B. predict. C. D. felonice murdravit*, so this word *murdravit* failed in the Indictment, and whether this shall be adjudged Murder or but Manslaughter was the doubt, by the generall pardon in Parliament last past, in which Murder is excepted; at length it was adjudged by the Justices of the Kings Bench, that without the word *murdravit* it is but Manslaughter, and the general pardon allowed by *Catlin. Dier, fol. 302.*

No Appeale shall be abated so slightly as before time; But if the Appaylor declared the Fact, the year, the day, the houre, the time of the King, and the Town where it was done, the Appeale shall stand, and shall not abate for want of fresh suit so it be within a year and day. *Stat. Glou. cap. 9.*

Oxon,

AT the Sessions of the Peace holden at Oxford before Richard Kent Mayor, &c. Justices of the Peace of our Lord the King, and Justices of the same King there, for divers Felonies, Trespasses, &c. within Oxford and the Suburbs of the same, &c. Item the Jurors finde, That one A. such a day and year, &c. with force and armes, the Cloe and Meadow of the Mayor and Burgesles of the Town of Oxon called Portmans Heath Meade at Oxon, in the County of Oxon, did break, &c. and because he said not at Oxon within the jurisdiction of this Court; and although that Oxon be written on the Head of the Indictment, it shall be intended of a thing done at large in the County, and not within a private jurisdiction; but if it had been written upon the head of the Indictment, The Town of Oxon, then the Indictment should have been good, for it should have been intended of a thing done within the jurisdiction, and for this cause the Indictment was adjudged. 12. H. 7. Ter, Mich. in the Kings Bench.

Trin. 20. Eliz.

A. Was Indicted upon the Statutes. of 1. and 13. Eliz. cap. 1. & 2. of a Premunire, for aiding one B. knowing him to be a principall maintainer of the authority and jurisdiction of the Bishop and See of Rome, with these words in the Indictment, viz. Contra formam Statuti. predicti. &c. for which he is in prison, and the Indictment certified into the Kings Bench. and for default of these words (being expressly mentioned in the said Acts)

viz.

viz, upon purpose, and to the intent to set forth and extoll the authority, &c. It was thought by the greater part of the Iustices (being assembled for that purpose) the Indictment was insufficient, notwithstanding the said words, *contra formam Stat.* were in the Indictment

Mich. Term. 40. & 41. Eliz.

Lancelot Flower was Indicted upon the Statute of 5. Eliz. for Perjury, in giving false Evidence to the great Inquest at the Sessions holden at *Witch,* &c. upon an Indictment of Rior, and this Indictment was removed into the Kings Bench, and Flower by the judgement of the Court was discharged of the Indictment. For the Statute of 5. Eliz. cap. 14. hath two Branches; the first is, against procurers of Perjury, and this is in matter depending in suit by Bill. Writ, Action or Information, so that procurement of Perjury upon the Indictment is out of this branch. The second branch (on which Flower was Indicted) is provided against them who commit Perjury by his, or their deposition in any of the Courts above mentioned, or being examined in *perpetuam rei memoriam*; and although this clause be generall and not restrained by any words to such particular suits as the first was, yet in good construction, this branch shall have reference to the former, and shall be expounded by it; for otherwise the party who commits the Perjury upon the Indictment shall be punished by this later branch, and he which Subornes and procures him to commit the Perjury shall pass unpunished, which is against Reason. and the intent of the makers of the Act.

A Man seized certain goods of *Frenchmen* in the time of War upon the Sea, and brought them to his house, and a stranger, pretending to be Vice-Admirall, with a great multitude of men, came with force to the house where the goods were, and made an assault on them who were in the house; out of which house a Gentlewoman, without any weapon went, and was killed by one of the Servants who came to take the goods, by flinging a stone at another in the gate, and he which came before to take the goods, before his coming, said, he would make him a *Cokes* that kept the goods, and that he would make him know the basest in his house. And whether the death of this woman was Murder was the question, and the Case was moved among all the Iustices, & *Sanders*, *Higham* Chiefe Baron, *Whiddam*, *Brown* and *Dalison*, Justices, and *Brown* and *Catlyn* Serjeants; the Attorney and Solicitor held, That if it appeared that the woman went in defence of *Manfell* (whose house was assaulted as it seems) then it was Murder in *Herbert* (who is intimated to be the offender) and all his Companions. But *Brooke*, *Stanford*, *Morgan*, *Dyer*, and *Predeaux*, held the contrary, because there was no malice forethought against the woman, and Murder cannot be extended further then it was intended; and the former held, That if two fight by appointment before hand made so to do, and a Stranger who is indifferent come between them to part them, and is killed by one of them, it is Murder in him, and some said in both, but the other part would not agree. *Dyer*, fol. 128.

BY Act of Parliament 5. Ed. 6. the Quarter Sessions, in the County of *Anglesey* in *Wales* shall be for ever held at *Beaumaris* only, and not elsewhere, in

In that County, except for cause of the Plague or other contagious disease, yet without any such cause the Sessions were held at *Newburgh* within the said County, and forty indicted of Felony. And upon information against those Justices which held the Sessions contrary to the Act of Parliament, it was adjudged that all those Indictments were *Coram non Judice*; and *vide Dyer. fol. 135.*

Trin. 12.H. 7.

UPON an Indictment in the Kings Bench *Seagwich* came to the Bar, and said, That one I. S. of D. in the County of *Cumberland* Husbandman, was indicted of Trepass, for that such a day, year, and place, with force and armes, made an assault and affray upon one *John*, Parish Priest of the Church of D. in the County aforesaid, and it seems to me that the party should be discharged upon this Indictment, for that he upon whom the assault was made had not any Sirname, so that he cannot be certainly known, and took some difference where the Jury took Conusans of the part of the name of the person upon whom the assault was made, and where they took no Conusans of the same person to no intent, and as it held in our Books that the Indictment had been good that I. S. in such a County Husbandman, did kill or rob *quendam ignotum*. But where they take Cenusans of part of the name of him of whom the assault was made, they ought to finde the certainty of the whole; and if the party shal be compelled to answer to this indictment, then he may be indicted afterwards for the same Trepass by the right name, and so shall make a double fine. But the Court *Fineux* being Chiefe Justice, the indictment was held good, & shewed how the party might

might avoid a second indictment if it should happen; *Kelwayes Reports*, fol. 25.

Mich. 12. and 13. Eliz.

John Coniers Gen. was indicted *de proditor. receptatio-
ne auxilio & consolatione Cujusdum lo. Fairfax Gent.
scirus ipsum Jo. Fairfax falso & proditorie diversas
perias monete de falso metallo ad similitudinem bone &
legalis monete Anglie vocat Shillings contrafecisse &
fabricasse.* And upon the Arraignment he was found
guilty, and the Justices would not proceed to Judg-
ment of Treason upon the Indictment, because it
was but misprision of Treason. *Dyer fol 396.*

30. Eliz.

Ellen Lambe brought an Appeale of Rape a-
gainst R. P. before the Iustices of the Gaole
Delivery at *Newgate*, to which he pleaded not
guilty, and was found guilty by a Jury of *London*,
and remained in Prison without Iudgment, and he
is known to be a Clark, and also that he is *Bigamus*
and yet, as the Law is, he might have his
Clergie *per omnes Justiciar.* And now by the com-
mand of the Queen the Iustices were required to
give their Opinion before the Lord Keeper upon
certain Exceptions and doubts moved to the
Court upon the Appeale. 1. *Quod tali Die & anno
parochia & Warda predi. &c: felonice rapuit, & eam
desoravit, & carnaliter cognovit,* without saying *Fel-
lonice.* 2. It was not averred in fact that she assen-
ted not to the Rape before nor after; in which case
the suite is given to the party by the Statute of
Westminst. 1. cap 34. and otherwise it is given to the
King by way of indictment only. 3. For that in the
Conclusion

Conclusion of the Count it is not supposed to be *Contra formam Statuti*. 4. If he be delivered as a Clarke convict to the Ordinary, whether he shall be without purgation; and whether the Queen might pardon the burning in the hand or not? But no resolutions were given to these Questions. But P. found favour with the Queen whom he had served before she came to the Crown, and delivered him from prison, and went out of the Realme. *Dyer fol. 202.*

Pasch 35. Eliz.

WEtberell brought an Appeale against Darly of Murder, the Defendant pleaded not guilty, and was found guilty of Manslaughter, and had his Clergie; and afterwards he was indicted of Murder, and thereof was arigned at the Queens suit, and he pleaded the former Conviction in the Appeale at the suit of the party, and it was adjudged a good Bar, and the reason is, because the life of a man shall not twice be put in jeopardy for one offence. *Co. 4 Rep. fol. 40.*

WArnesford of the Temple was sued upon an Appeale of Murder, brought in the County of Wilts, and the Writ was *ad respondendum A. B. alia, dict. fratri & heredi.* of him that was murdered. And it did appeare upon the Count that the stroke was given in *Com Wilts*, and that he languished three weeks in *D. in Com. Berks: & ibidem obiit & sic predictus defendens dic & Anno supradictis apud C. re. felonice interfecit & murderavit.* And upon this appeale the defendant was discharged, for the plaintiffe is not named brother and heire in the substance of the Writ, but only in the *alias dict.* brother and heire

heire, for his very name, and the name by which he ought to bring the Writ, ought to be put before the *alias dictus*, as to answer to A. B. Brother and Heire, &c. *alias dict. &c.* and so it was moved, that the Conclusion of the Count was repugnant to the Premises, for he was not murdered, *die quo percussus fuit*, for he lived three weeks after — But of that the Iustices and Serjeants were in some doubt. But upon the first cause the defendant was discharged. *Dyer fol. 50.*

Mich. 32. and 33. Eliz.

Katherine Hume, brought an Appeale of murder against Luke Oyle for the death of A. H. her Husband, and declared that the defendant 27. Sept. gave a mortall wound at *Weetwood* in the County of *Northumberland*, and that the said A. H. the same day of the wound aforesaid at *williborne* in the said County died, & sic predict. Lucas Oyle *apud weetwood predict. modo & forma predict.* the said A. H. felonice &c. *murdravit*. And it was resolved that the Count was repugnant and insufficient, for as it cannot be said that he murdered him the first day (as it was in another case) so it cannot be said that he murdered him at the place where he was struck, but where he died.

Pasc. 39. Eliz.

John Goffe, brother and heire of R. Goffe, brought an Appeale of murder of the said Rich. Goffe against Bibithe as principall, and against Howel David as accessary before, and against David ap Thomas as accessary after. The principall pleaded not guilty, and by *Nisi prius* in the County of *Monmouth*, he was found

found guilty of Manslaughter, and nor guilty of Murder, and had his Clergie, and it was resolved by Popham, and by the whole Court, that Howell David was discharged, because one cannot be an accessary before the Fact in case of Manslaughter, for Manslaughter must ensue upon suddain falling out, or affray, for if it be premeditated, it is Murder, and the same Law is, if the principall upon his arraignment confess the Felony, and before judgement obtain his pardon, or have his Clergy, the accessary is thereby discharged. Co.Rep. 4 part 4 fol 43.

Hillar. 30. Eliz.

Inquisitio capta ad Sessionem pacis &c. in Com. Surry *Sent. die martis & die mercurii, &c.* and recites the Statute of 8.H.6. of a forcible entry, and misrecites it in some points; and this indictment was quashed for two causes. 1. Although the Sessions may endure two or three dayes, yet the Record ought to mention, that the Sessions were held at one certaine day. 2. And for that the Statute of 8.H.6. was misrecited in a materiall point. And therefore it is no policy in such Indictments to recite the said Act. of 8.H.6. for the recitall thereof is not necessary, and the misrecitall thereof is fatall to an indictment, and therefore the sure way is to draw the Indictment with Conclusion *Contra formam Statuti &c* and with no recitall of the Act. Co. Rep. 4 part. fol. 48.

Pasc. 9. Eliz.

IN an Appeale of death, the plaintiff declares of Felony and murder, *ex insidiis insultu & malitia pre-*
Appeals. *meditatis & pratogitatis, &c.* The Defendant pleads not guilty to the Felony

lony and Murder, &c. And by *Nisi prius* it was found not guilty of the murder, but guilty of the death (*scil.*) of the felonious killing, &c. and now in the Kings Bench, it was doubted, if upon this Verdict the Defendant shall be discharged of the Appeale, although he could not read as a Clerke, or not. And note that the Verdict by the Postea was, *Quod def. non est culp. de murdro infra nominato &c. modo & forma prout. pred. querens interius versus eum narravit, sed iidem Juratores dicunt quod pred. def. die anno & Loco infra contrit. felonice interfecit pred. T. B sed non ex malitia sua præcogitata — & postea petiit lib. um.* But the Quere was, whether the Queen could pardon the burning in the hand, (for the imprisonment she could) because it is the execution of the party in the Appeale, and he shall be convict without purgation made during his life, *Et vide M. 13. Reg. nunc.* That without this word *Murdravit* in the Indictment, it shall not be adjudged murder, although the words *ex malitia præcogitata & voluntarie & felonice interfecit* be in, *per Cailyn, Dyer, fol. 161.*

Mich. 33. H. 8.

IN the Kings Bench, the Case was, A woman had Ipoysoned her Husband in *Devon*, which offence was made Treason, about 31. H. 8. And by a general pardon granted by Parliament in the 32. year, the offence was pardoned; now the Son brought an Appeale of murder against the wife (who as it should seeme was his mother in Law) and whether the Appeale would lye was the Question. And it seemed to some, because the offence is made Treason it drowns every less offence, that is, the offence of murder, which was before at the Common Law,
and

and so the offence not punishable as murder but as Treason, and some others thought otherwise. But the Opinion of the Justices was, that the Appeale was not maintainable. *Dyer fol 50.*

Mich. 12. and 13. Eliz.

ONe Stanley Prisoner in *Newgate* was indicted of murder of I. S. and was thereupon arraigned, and pleaded not guilty, but was found guilty, and immediatly the wife of I. S. entred an Appeale of death, to which Stanley pleaded by Councell, that the Plaintiffe, after the death of her Husband, took another Husband (wirhout shewing his name) at *Exeter*, which was a forraign plea; to which the Plaintiff replied not, and so the matter depended for a year, and afterwards by *Certiorare*, the Indictment and all the proceedings thereupon were removed into the Kings Bench, and the Prisoner also; and he being asked wherefore Judgement should not be given against him upon the same Verdict, he pleaded the whole matter above, & that the Appeal is yet depending, to which the Queens Attorney pleaded *nul tel record* and no continuance of the Appeale hath been after the forraign plea pleaded, which is now more then a year past And afterwards this Terme the wife was Nonsuit in her Appeale; whereupon Judgment was given that Stanley should be hanged by the neck upon the Indictment and triall. *Dyer fol. 296.*

Hillar. 28. Eliz. in the Kings Bench.

Richard Vaux brought an Appeale of Burglary Against Thom Brooke, and declared that the defendant, *domum mansionalem predict Richardi Vaux felonie*

felonice & burgaliter fregit, &c. And the defendant pleaded not guilty, and by a Jury of the County of Buck. he was convicted of the Felony and Burglary aforesaid, and in Arrest of Iudgement, it was moved by the defendants Councell, that the Count was insufficient. For the word *Burgaliter* was not of any signification, but the Count ought to have been *Burglariter* or *Burgulariter*, and the offence is called Burglary, or Burgulary and not Burgale, and it was resolved by the Court that the Count was insufficient, and thereupon the party was discharged, Co. Rep. 4. part. fol. 39.

TErmino Pasce. 31. and 32 H. 8. John Giner was indicted before the Coroner *super visum corporis*, for the death of Emelin Giner his wife; And the Indictment was, that the said Emelin was *in pace domini Regis quousque antedict. Joh. Giner viz. prafate, Emelin Giner de Hanbrige predict. in Com. pradiet. Yeoman.* And whether these two additions of the Town and name might be understood to refer to John Giner or to his wife, this moved in abatement of the Indictment, for *ad ultimum antecedens fiat relatio*: and the Case in 9. Ed. 4 was cited, where a man was indicted of Felony by the name of I. S. of D in the County aforesaid, *servirus W. B. in eodem com. Yeoman*, and for want of sufficient addition to I. S. he was discharged of the indictment, for Yeoman ought to be referred to the Master and not to I. S. and Servant is not a sufficient addition by which &c. And there was a president in the Kings Bench about Mich. Term. 15. or 16. Hen. 8. before Fineux, That one Sibilla Batersby *nuper de T. in Com. Ebor. Vxor Joh. Batersby nuper Spinster* was indicted of Felony and Murder, and for default of addition she was discharged, for Spinster shall have relation

relation *ad ultimum antecedens*, and for another cause the Indictment was excepted against, for it may be well understood by the Indictment that the wife was not killed, but is alive, and so is repugnant in it self, because the said *John Giner* is called *vir prefate Emeline*, where it should have been *nuper vir*, for *vir* is correlative to wife, for one cannot be a husband but in respect of his wife, therefore it shall be intended, that the Espousalls still continue, for which causes, &c. And the Justices were a long time in doubt, but the better Opinion was, that notwithstanding the exception, the Indictment was good enough, and it could not be otherwise understood but that the word (Yeoman) had reference to the husband, &c. *Dier Rep. fol 46.*

3. Eliz.

AT Cambridge Assise before Catlyn and Brown Justices, they caused an Indictment for the Murder of an Infant female child immediatly after the Birth, against the Mother thereof, and the Midwife, and against one *George Parker*, who begot the said child in Adultery, as accessory, in malicious procuring of the said Murder before the birth; the Mother and Midwife were arraigned as principalls, and found guilty, and condemned, and *Parker* as accessory before the Fact, and *Parker* was also condemned and hanged, although he was a Clark *pro procuratore predict.* *Dier fol. 186.* Where you may see the Indictment at large.

Trin. 36. Eliz. in the Kings Bench.

Iohn Arundell Esquire, was indicted of the Murder of one *William Parker*, and the Murder was adjudged to be done *apud civitatem Westm. in com Midd. in quadam platea ibidem vocat Kingstreet in parochia sancte Margarete in eodem Com. Midd.* And to this Indictment Arundell pleaded not guilty, and for the trial of this issue, a Jury was returned *de vicinero civitatis Westminst.* and the Jury found the defendant guilty. And in arrest of Iudgement it was shewed that *visur* ought to have been out of the Parish, not out of the City. And upon this doubt all the Iustices met at *Serjeants Inne*, and after many Arguments, it was resolved that the Triall was insufficient, and a new *Venire facias* awarded to try the issue againe. For his life was never in jeopardy. *Co. Rep. 6. part. fol. 14.*

AN Indictment was, That *Eliz fuit in pace dei, &c.* untill A: the husband of the said *Elizabeth* of D. in the County of S. Yeoman did murder her, and it is good, for Yeoman is the addition of a man only, and because the Town must of necessity have reference to the husband. But an Indictment against *A. S. de D. in Com. S. uxor. I. S. Spinster, &c.* is not good, because Spinster being an indifferent addition for man or woman, it ought to refer to I. S. which is the next *Antecedent*, and so the woman had no addition.

Indictment against I. S. Servant to I. D. *de D. in Com. Midd. Butcher &c.* is not good, for servant is no addition, and Butcher refers to I. D. which was the next *Antecedent*.

Iohn Price was indicted of the death of a man *se defendendo* at *Shaftsbury*, in the County of *Dorset*, and Iustice *Frowick*, was clear of Opinion to have him discharged, and it seemed that the Statute of *Gloucester* held no place in this Case, but where he is first indicted, did he, did the murder *felonice*, and the speciall matter by Verdict, there the King shall do him favour. But it seemed where speciall matter is found by indictment, he shall never be charged to answer the indictment, nor shall forfeit his goods. And afterwards in *Mich. Terme*, 19. H 7. He propounded the Question to the Iustices of *Westminster*; and the Opinion of all the Iustices of *England* was, That he must be arraigned in this Case and shall be put to sue forth his Charter of pardon, whereupon he caused the indictment to be put into the Kings Bench, and there he pleaded his pardon, and in the mean time he went upon baile; and this was before *Frowick* and *Boteler* Iustices of the Goale delivery at *Shaftsbury*. *Kel. Rep. fol. 53.*

An Indictment void and quashed.

AN Indictment was held void where any of the Indictors were outlawed of Felony at the time of the indictment; and the Indictce alledged it upon his arraignment, where properly it ought to have been alledged before the Inquest was taken, yet the exception was allowed and the indictment adjudged void. *Hill. 11. H. 4. fol. 40. Indict 25;* and so it is if the Indictors be excommunicate.

William Vesey was indicted for erecting a Dove-house: It was moved that the indictment was insufficient, the words were, That he, *erexit columbare vi & armis ad nocumentum commune*, and that he was not *Dominus manerii*, nor *Rector Ecclesie*, and the

indictment was quashed, because it was not contained in the indictment that there were Doves in the Dove-Cote, for the meere erecting of a Dove-Cote if there be no Doves in it is no nuisance, and so was it held by the Iustices.

Trin. 21. Jac. in the Kings Bench.

Foure severall men were indicted for erecting and keeping four severall Inns in *Bath*; it was moved that the indictment was insufficient, because the offence of the one is not the offence of the other. *Dodridge* said, one indictment may comprehend severall offences if they be particularly laid, and then it is in Law severall indictments. It may be intended, that the Inns were lawfull Inns, for it is not laid to be *ad nocumentum*, and therefore not punishable, unless if it be an annoyance and inconvenient for the Inhabitants, otherwise it is a thing lawfull to erect them. And because there were not the words *ad nocumentum*, the indictment was quashed.

Pasch. 3. Car: in the Kings Bench.

Day was indicted for erecting a Cottage. It was moved. 1. That the indictment was insufficient, for that the words of the Statute are, *Shall willingly uphold, maintaine and continue*; and the indictment is only that he continued, and so wants the words *voluntarily upheld*, according to the Statute.

2. It did not appear in the indictment that it was newly erected, for it is only that he *continued*, not that he *erected*; and the indictment quashed, because it being a penall Law it was not pursued.

Tren. Mich. 15. Car.

IT was moved to quash certain Presentments, because they were taken in a Hundred Court, and therefore *Coram non iudice*. Justice Jones said, that a Hundred might have a Leet appendant to it, and then they were lawfully taken. But Barkley, and the rest of the Court answered, because it doth not appear to the Court whether it were so or not, the Presentments were void.

Every indictment taken before the Kings Justices in the County Palatine of *Lancaster*, or before any Sheriffe in his Turne in the said County, whereby any person is supposed by the same Indictment to be or to have been inhabiting out of the said County, and within any other County of *England*, shall be taken by the Virdict of twelve men, whereof every one of them shall have Lands or Tenements one hundred shillings *per annum*: And no Process shall be made out of such indictment before it be examined before the Iustices within the said County, whether the said Indictors, and every of them at the time of such indictment taken, had Lands or Tenements within the said County of *Lancaster* to the yearly value of one hundred shillings above all charges, and if it be found otherwise, the said indictment shall be void. 33. H. 6. 2.

Pasch. 15. Eliz.

James Taverner being a Copiholder to the Lord Crumwell of his Mannor of *Northeltham* in *North-folk*, made a Customary in *Latine* of the said Mannor in Parchment with eleven Labells and Seales of his own and other Tenants of the Mannor, inserting

ing in it divers Customes very false, and tending openly to the disherison, and pretending by the Title of the said Customary to be collected, renewed, and set forth by the consent of all the Freeholders, and Copiholders of the said Mannor, being in number one hundred at least, and allowed and permitted by the Lord of the said Mannor and in the Conclusion. *In cujus rei Testimonium* the Eleven whose names are underwritten have put their Seales, the day and year above said, but no day or year appeared in the Title, nor no consent of all the Tenants, nor allowance of the Lord made in truth. And this was proved in *Taverners* to be done wittingly, subtilly and falsely, to the intent, &c.

Whether this were a Forgery punishable by the Statute *de Anno 3.* of the Queen was the doubt, and referred by the Lords to the consideration of all the Judges, whose Opinions for the greater part, were reported by the two Chiefe Iustices to be Forgery punishable by the open and shamesfull Penance contained in the Statute, which expressly speaks of a Writing sealed as this was, to the intent to benefit themselves and to disinherit the Lord, and accordingly Iudgement and Decree was pronounced this Terme, and direction given in what manner to levy the Levy, the costs and damages, &c.

Afterwards the Queen pardoned the Execution of the corporall punishment, which is, That the party grieved shall recover double costs and damages, and that the offender shall suffer upon the Pillory the corporall punishment, and shall also forfeit to the Queen the profits of his Lands, but the Plaintiffe shall first be satisfied, *Dyer fol. 322.*

Pasch. 12. Eliz.

A Bill of Perjury was sued in Chancery for Perjury there committed, *Contra formam Stat. Anno 5. Regin. Mar.* and it was doubted, if the defendant will plead not guilty, whether he shall be sworn to his plea, and to answer Interrogatories, as they use in the Star-Chamber, and it was resolved by Catlyn, Dier, Whidden, and Saunders, that they shall not be examined upon Interrogatories, unless it be so, that the Court of Chancery hath absolute power, and had used to examine Perjuries in that Court before the Statute, for then it is reserved by the last *Proviso* of the Statute as for the Star-Chamber. And if the Court of Chancery will examine Perjury committed there (as it may by the Statute) it ought to be by *Latine* Bill, and pleading in *Latine* and joyne issue there, and try it in the Kings Bench, *ut in similibus casibus slet.*

In the grand Case of Forgery, touching Sir John Marwins Will, it was moved for a doubt, if one who hath written the Will of one that lieth mortally sicke, inserts a Clause or Article in the Will, after the Testator is speechless, and without memory, and did not before command to put in that Clause or Article, whether this were Forgery of the Will, and punishable by the Statute of 5. Eliz. or not, and it was agreed, and resolved by the better Opinion that it was not, nor was it the meaning of the Makers of the Law. *Dyer fol. 288.*

These two resolutions concerning Perjury and Forgery, I have thought good to set down the Punishment of both as they are in the Statutes appointed. A

A Man convicted of Forgery shall pay to the party grieved his double costs and damages, and shall be set upon the Pillory in some open Market Town, or open place, and there have both his Eares cut off, and his Nostrills slit, cut and seared with a hot Iron, so as they remaine as a perpetuall marke of his falshood, and shall forfeit to the King the whole issues and profits of his Lands during his life, and shall suffer perpetuall imprisonment.—
5. Eliz. cap. 14.

This sentence (as to the Corporall punishment) was executed upon one Shepard for forging of Deeds, in the great cause between Sir Joh. Leveson of Kent, and Sir Edward Sackville (since Earl of Dorset) about Sir Richard Levesons Land.

IF any person either by subordination, or by their own Act, shall willfully, and corruptly commit any manner of willfull Perjury in any of the Courts mentioned in the Statute, and shall thereof be convicted, shall forfeit to the Queen twenty pound, shall suffer six moneths imprisonment without Baile or Mainepriise, and his Oath from thenceforth shall not be received in any Court of Record, untill Iudgement given against him shall be reversed.—
5. Eliz. cap. 9.

Pasc. 16. Eliz.

THE wife with her servant conspired the death of the husband, and appointed the time and place, and the

Petit Treason.

the husband is killed by the servant in the absence of his wife, and this is petit Treason in them both, though the wife, was not present, by the Opinion of divers Justices, otherwise it is if he were not a servant, but a stranger. *Dyer fol. 332.*

Hillar. 2. and 3. P. and Mar.

A Maide Servant, and a Stranger conspired to kill the Mistress, and at the time appointed in the night she let him in at the door, and brought him by a candle unto her Mistress bed where she lay asleep, and the Stranger killed her in her bed, the servant saying, or doing nothing, and whether she were a principall in this death as well as the Slayer, and whether this be Petit Treason in the Servant, for that the principall Actor was but murderer, was the Question: *Portman* Chiefe Justice, her Principall and Traytress, so did *Brooke*, Chiefe Justice of the Common Bench, and *Hare*, Master of the *Rolls*, but *Brooke*, Chiefe Baron, *Dalison*, and *Stamford* Iustices held otherwise. *Dyer Rep. fol. 128.*

If a servant procure a Stranger to kill his Master, it is not petit Treason in the Servant, because it is but Felony in the principall. *40. Assi. Plat. 25. Finch, Ley, fol 6.*

IT was said, That if a man wrestle with another, and the one give the other such a fall, as whereupon he dieth, this is no Felony, because it was the Act of them both to come together, and the intent of him that gave the fall was not to kill the man, and therefore no Felony; and the same Law is, if a man sling a stone over a house, and kill a man, it is no Felony.

But in all these Cases he forfeits his goods, and he

he must remaine in Prison untill the King have pardoned him according to the Statute of Gloucester, cap. 9. For the Statute is, That the King shall shew him his Grace if he please. Some men say, that these words (*If the King please*) are void, because the King of Common Right is bound to grant him his Charter of pardon. And it was argued by some, that when this speciall matter is found by Verdict, that the man was slaine by such mischance, that he which did the Act should be presently delivered without his Charter, because it appeared not to be Felony, yet notwithstanding, it was held that he ought to have his Charter, because the King had one of his Realm slain, which is a contempt to him, and therefore behoved him to have a Charter of Pardon from the King.

26. *Lib. Ass. fol. 5.* It was adjudged, that where a man had slain another *se defendendo*, and all the speciall matter was found by the Verdict, that he went away acquitted without Charter

44. *Ed. 3. Ter. Hillar. in principio.* It was there adjudged, that if one strike another down to the ground, and he which was struck down, draw his Knife, and the other which was upon the ground draw his Knife, and he which was struck for hast fall upon the Knife of him which was upon the ground, and so slew him, and it was adjudged, that he needed not have his Charter, nor shall lose his goods.

If in this last Case the party so killing shall not deede his pardon, nor shall forfeit his goods, much less in the former Cases of Wrestling, &c. shall there be any forfeiture of goods, for if no Felony no Forfeiture.

The Opinion of Serjeant Keble was, that if two play at two handed Swords, and the one kill the other, it is not Felony, because the play began by assent of him that was slain. But he said, If a Master correct his servant, the Lord his Villaine, &c. by force of which correction he dies, although the Master intended not to kill him, yet it is Felony, because it behoves them which give such correction, so to moderate it, that no such mishap may follow. *Keble Rep. casus incerti temporis. fol. 136*

By *Fineux* and *Kingsmell* adjudged, That if certaine people at *London* procure one to kill another in a forraign County, who, upon this procurement kill the man in the said forraign County. In this case, those of the County where the murder was done, may indict those procurers as accessaries for their procurement done here in *London*, because the murder tooke its beginning by the procurement. And this case was adjudged by the advise of all the Justices of *England* by long advisement upon the Case of *Cressede*, and *Fineux* thought in this Case, that if an abatement be made in a forraign County after the Felony done, that they of the forraign County may indict the abettors as accessory, or otherwise he shall be unpunished. *Tryn. 20 H.7. Keble Rep. fol. 67.*

For Burglary against the Principall and Accessaries before and after the Act.

Cumb. ff.

THe Jurors, &c. do present, That I. D. late of E. in the County aforesaid Labourer, the 10. day of *October*, in the year of our Lord God 1650. between the hours of 10. & 11. of the clock in the night of the same day at N. in the County aforesaid, the Mansion

Mansion house of I. B. Esquire, feloniously, and Burglarly did break and enter. *Anne* the Wife of the said I. B. then in the same house in the peace of God, and the Keepers of the Liberty of *England* then being, and then and there twenty pound of money of the goods and chattells of the said I. B. then in a certain Chest in the said house being found, Feloniously and Burglarly did take and carry away, against the Peace. And that H. I. late of N. aforesaid, in the County aforesaid Labourer, before the Felony and Burglary by him the said I. D. in forme aforesaid committed, and done, *viz.* the fifth day of *October*, in the year aforesaid to commit the said Felony and Burglary in forme aforesaid did excite, abet and procure, &c. against the Peace. And that R. S. late of N. aforesaid, in the County aforesaid Labourer, knowing the said I. D. the said Felony and Burglary to have done and committed, the said I. D. the — day of — &c. in the said year after the Felony aforesaid, by him the said I. D. to be done and committed at N. aforesaid, Feloniously did receive comfort, and entertain, against the peace, &c.

Another for Burglary.

Cambr. ff.

THE Jurors, &c. do present, That A. B. late of C. in the County aforesaid Labourer, the tenth day of *October*, in the year of our Lord God 1652. about eleven of the clocke in the afternoone (that is to say) in the night of the same day, at S. in the County aforesaid, the Mansion house of one R. F. Gent. with force and armes Feloniously and Burglarly did breake and enter, with intent feloniously to steale the goods and chattells of the said R. F. in the

the house of the said R. F. then being, the said R. F. and his Family in the said House then and there being, and in great bodily feare put, by the breaking and entring aforesaid, against the peace.

For breaking a house, and stealing goods in the day time, upon the Statute of 39. Eliz.

Lanc. ss.

THe Jurors, &c. do upon their Oaths present, That T. G. late of H. in the County aforesaid Husbandman, the first day of *July*, in the year of our Lord God 1652. in the day time, between the houres of eight and ten of the clock of the same day, at H. aforesaid, in the County aforesaid, the Mansion house of R. O. with force and armes, Feloniously did break and enter, no person in the same house then being, and then and there, with force and armes, six Pewter dishes, of the value of twenty six Shillings, of the goods and chattells of the said R. O. then and there, in the said house being found, Feloniously did steale and carry away, against the peace, &c.

Upon an Assembly of all the Judges at *Serjeants Inne* in *Fleetstreet*, with the Barons of the *Exchequer*; It was cleerly agreed by them all (but two, who at the beginning made some doubt of it, but that at the end assented also) That in the night, that if a house be broken, with an intent to steale any thing being in the house, although no person be in the house at that time, yet this is Burglary. For the Law is, that every man shall be in security, in the night, as well for their goods as their persons which be in the house.

And so hath the Law been alwayes put in execution, and in all Books which speak of Burglary, it is

is not mentioned, that any person ought to be in the house but that it is Burglary, the house being broken in the night, to kill any person there, or to steale any thing out of it; and the cause that of late it hath been put in the Indictments, that some persons was there, &c. hath been, because in such cases of Burglary Clergy was taken away; but now by the Statute of 18. *Eliz.* Clergy is taken away in every case of Burglary.

And the ancient Presidents are *Quod domum* of such a one, *noctanter felonice, & Burglariter fregit*, without mentioning that any person was then in it, or mentioning that it was *domus mansionalis*, and it may be a mansion house, though no body dwell in it, *Pophams Reports*, fol. 42. and fol. 52. where there is a Judgement in the Kings Bench to this effect, *Trin. 36. Eliz.*

Pasch. 1. Mar.

One was indicted, *Quod Burglariter fregit Ecclesiam in nocte ad spoliandum & depredandum bona parochianorum in eadem existent sed nihil abstulit.* And it was held clearly by *Bromley*, that this is Burglary, but he said it should have been *fregit & intravit.*

Wray Chiefe Justice said, That if a man have a mansion house, he and all his Family upon some accident are part of the night out of the house, and in the meane time one comes and breakes the house to commit Felony, this is Felony, for though the owner, nor any of his house-family be in the house, yet it is *domus mansionalis*, and the words of an Appeal or Indictment are *domum mansionalem, predicti. R. C. fregit, &c.*

And according to this Opinion it was resolved by
Popham

Popham Chiefe Iustice, and all the Iustices, That where a man hath two houses, and dwells sometimes in the one and sometimes in the other, and hath a Family or servants in both, and in the night when the servants are out of the house, the house is broken by Theeves, that this is Burglary, for the reason given by *Wray, Co. 4 Rep. fol. 46.*

Concerning the sense of Burglary, both in principalls and accessaries there is very much said in the XI. part of Sir *Ed. Cokes Reports*, in *Pulsters Case* worthy the knowledge.

For burning of a dwelling house.

Linc. ff.

THe Jurors, &c. upon their Oathes do present, That I. S. late of W. in the County aforesaid Labourer, not fearing God, nor having him before his eyes, but being led by the instigation of the Devill, the sixt day of *August* in the year of our Lord God 1651. about four of the clock in the after noon of the same day at W. aforesaid, in the County aforesaid, into the mansion house of one T. R. a Cole of fire maliciously, willfully and feloniously did put, and there with the said Cole of fire, the foresaid mansion house, and one Barne of the said T. R. there, and six Oxen coloured black, of the price of thirty pounds of the goods and chattells of the said T. R. in the said Barne, then and there being maliciously, willfully and feloniously did burne, destroy, and totally consume, against the peace, &c.

*For Robbing by the High Way.**Essex. ss.*

THe Jurors, &c. do present, That A. B. late of C. in the County aforesaid Butcher, the first day of *Aprill* 1650. at I, in the said County of *Essex*, in the high way there, in and upon I. W. then and there in the peace of God, &c. being, did make an assault, and him the said I. W. then and there in great fear of his body did put, and one Clock, coloured gray, of the value of twenty Shillings, and twenty Shillings in money, numbred, of the goods and chattels of the said I. W. then and there found, from the person of the said I. W. then and there with force of armes feloniously did take and carry away, against the peace, &c.

*For a Robbery by the High Way.**Surr. ss.*

THe Jurors, &c. do present, That A. B. late of R. in the County of *Surrey* aforesaid Labourer, and C. D. of &c. Lab. and E. F. of &c. Lab. the —day of *July*, in the year, &c. at Red-Hill, in the County aforesaid, in the High Way there, in and upon G. H. Servant to Sir *Jo. Compton* Knight, then and there in the peace of God, &c. being, did make an assault, and him the said G. H. then and there, in great fear of his body did put, and five hundred pound in mony, numbred, of the goods and chattells of the said Sir *John Compton*, then and there from the person of the said G. H. then and there with force and armes feloniously did take and carry away, &c.

For recovery of this money, *Pasc. 15. Car. Sir John Compton*

Compton, brought his Action against the Hundred of *Elmebridge*, for a Robbery done at *Redhill*, within the foresaid Hundred. The robbery was done upon his man, and five hundred pounds taken from him. And upon the triall, upon some exceptions taken to the prosecution, It was agreed by the Iustices, That although there be a remissness in the party robbed, or that he refuse to lend his Horse to make *Hue and Cry*, yet this doth not take away his Action, nor excuse the Hundred; and although the party robbed do not know the Robbers at the present time, and therefore take his Oath before a Justice of Peace, as the Statute of 27. *Eliz.* hath provided, and afterwards comes to know them, and so he affirme; yet this doth not take away his Action. And it was resolved also, that notice given in one Hundred, five miles from the place where he was robbed it is sufficient, because the party who is a Stranger to the Countrey cannot have Conusans of the next Place or Town. The Chiefe Justice said, That notice given at one Town, and *Hue and Cry* be at another is good — and found for the Plaintiff.

And one of the Councell with the Hundred making a *Quere*, whether such persons who became Inhabitants after the Robbery, and before the Judgement, should contribute; Justice *Berkley* said, That all who are Inhabitants at the time of the Execution should contribute.

Mich. 16. Jac. in the Kings Bench.

WAite a Clothier of *Newberry*, was robbed in the Hundred of *Stoke*, of fifty pounds upon the Sabbath Day. And the Question was, Whether the Hundred were chargeable for not making *Hue*

and Cry. Three of the Iustices agreed that it was; but *Montague* Chiefe Iustice *contra*, for that, on that Day no man was compelled to do it; whereupon it was found for the Plaintiff.

Norris brought a Writ upon the Statue of *Hue and Cry* against the Hundred of *Gantry*, and the Robbery was said to be 9. *Octob.* 13. *Jac.* and the Teste of the Writ was 9. *Octob.* 14. *Jac.* and a Verdict for the Plaintiffe. It was moved in arrest of Judgement by *Harvey*, that the Writ was not brought within the year as the Robbery committed, which are the very words of the Statute of 27. of *Eliz.* and after some diversity of Opinion, it was agreed that the Writ was not brought within the year, and though the party robbed deserved releeve, and pittie, yet against the Hundred it is a penall Law, and the Plaintiffe could not have Judgement. *Hob. Rep. fol: 196.*

For Cutting of a Purse and twenty Shillings in it.

Midd. ss.

THe Jurors, &c. do present, That A. B. late of C. in the County of *Midd.* Labourer, the— day of—in the year, &c. at C. in the County aforesaid, twenty Shillings in money, numbred in purse, being of the goods and chattells of T. D. then and there being found from the person of the said T. D. with a Knife of the value of four pence, which he the said A. B. in his right hand, then and there had and held, feloniously did cut, take, and carry away, against the peace, &c.

For Purse Picking.

Midd. B.

THe Jurors, &c. do present, That A. B. late of C. in the County aforesaid Labourer, the tenth day of *August* in the year of our Lord God, &c. at H. in the County aforesaid, with force and arms, in and upon one E. F. did make an assault, and twenty Shillings in money numbred in the purse of the said E. F. being found, and the purse of the said E. F. then and there from the person of the said E. F. secretly, and without the knowledge of the said E. F. feloniously did take, and carry away, against the peace.

For stealing Corne, and another for receiving it.

Devon. Ss.

THe Jurors, &c. do present, That A. B. late of C. in the County aforesaid Labourer, the first day of *Jan.* in the year of our Lord God 1652. at C. aforesaid, in the County aforesaid, with force and armes, two Measures called Striks, of Wheate to the value of five Shillings, of the goods and chattells of R. H. Gent. then and there found, and being feloniously did steale, take and carry away against the peace. And that I. G. late of C. aforesaid, in the County aforesaid Husbandman, knowing the said A. B. the Felony aforesaid, in manner and forme aforesaid to have committed, after the said Felony was committed as aforesaid, that is to say, the second day of *Jan.* in the year aforesaid, at C. aforesaid, in the County aforesaid; the said A. B. did receive succour, maintaine and aide, and

the foresaid goods and chattells did receive, against the peace.

For stealing of a Cloke, and accessory before.

Cornwell. ff.

THe Jurors, &c. do present, That A. B. late of C. in the County of *Cornwell* aforesaid Labourer, the — day of — in the year of our Lord God 1650 at C. aforesaid, in the County aforesaid, one clock coloured black, to the value of 20.s. of the goods and chattells of H. L. then and there found and being, feloniously did steal, take, and carry away, against the peace: And that R. C. late of C. aforesaid, in the County aforesaid, before the Felony aforesaid, in manner and forme aforesaid done, that is to say, the — day of — in the year aforesaid. at C. aforesaid, feloniously did abet, and counsell the said A. B. the Felony aforesaid to commit, against the peace, &c.

The offences afore mentioned, and all other against the peace are enquirable & triable before the Justices of Oyer and Terminer, but very seldome any of those great Offences are determined at the Quarter Sessions, though they have power to enquire of Felonies and other Offences by their Commission, but of such as usually are there enquired of and determined, you may take the ensuing Presidents, and afterwards some Rules by which the Justices of the Peace do proceed.

For

For a forcible entry and detainer upon the Statute of 8.H.6.

Not. ff.

THe Jurors, &c. do upon their Oathes present, That whereas in a Statute in the Parliament of Henry the 6. late King of England, holden at Westminster, in the eight year of his Raigh, among other things it was contained. That if any person by strong hand shall be expelled or disseised, or shall peaceably being expelled, shall by strong hand be kept out of the same, or Feoffment or discontinuance thereof, after such entry be any way made to defraude or take away the right of the Possessor, the party grieved in this case may have against such Disseisor an assise of Navel disseisin, or a Writ of Trespas. And if the party grieved by his assise or action of Trespas, do recover by Verdict, or by any other meanes by due course of Law, it be found that the defendant entred into the Land by force, or after his entry, held the same by force, that then the Plainriff should recover trebble damages against the diffendant and should also make Fine and Ransome to the King, as in the Statute more at large is contained.

Nevertheless, one A. B. late of C. in the said County Gent. not regarding the said Statute, nor fearing the penalty in the said Statute contained, the tenth day of August, in the year of our Lord God 1650. at C. in the County of Nott. aforesaid, with force and armes, and strong hand, into one Messuage and ten Acres of Pasture, and five Acres of Medow, then in the Possession of R. C. and of the Freehold of T. C. did break and enter, and then and there, with force and armes, and with strong hand

hand, the foresaid R. C. out of the said Messuage, and ten ares of Pasture, and five acres of Meadow, with the appurtenances did expell, and the said T. C. with force and armes, and strong hand, then and there, thereof did disseile, and the said R. C. so from the same being expelled, and the said T. C. so being thereof disseiled, from the foresaid Messuage and ten ares of Pasture, and five acres of Meadow, with the appurtenances, & from his possession thereof, from the said tenth day of *August*, untill the day of the taking of this Inquest, with force, and armes, and strong hand, did keep out, and untill this time doth keep out, and detaine, to the great damage of the said R. C. and T. C. contrary to the forme of the Statute aforesaid, and against the peace, &c.

For a forcible entry upon the Statute of 5. Rich. 2.

Lanc. B.

THE Jurors, &c. do present. That whereas by a Statute in Parliament of *Richard the Second*, late King of *England*, holden at *Westminster*, in the County of *Middlesex*, in the first year of his Reign made, It was ordained. That from thenceforth, no man should make entry into any Lands or Tenements, but in case where the entry is given by Law and in such case, not with strong hand, nor with multitude of people, but in peaceable, and quiet manner only; and if any man should from thenceforth do otherwise, and should thereof by due meanes be convicted, he should be punished by imprisonment of his body, and ransomed at the Kings pleasure, as in the said Statute more at large is contained: Nevertheless one *A. B.* late of *C.* in the said County of *Lanc.* Gent. and *D. E.* late of *C.* aforesaid Gent. and other Male-factors

factors yet unknown to the said Jurors, the Statute aforesaid, not regarding, nor the punishment in the same Statute contained, not at all fearing, the first day of May, in the year of our Lord God 1652. at C. aforesaid, in the County aforesaid, into one Messuage, and six acres of Land, and six acres of Pasture, with the appurtenances, then in the Tenure or Occupation of L. M. by force of a Demise thereof made to the said L. by N. O. Gent. made, upon the possession of the said L. where entry to the said A. B. and D. E. or either of them was not given by Law, unlawfully did enter; and the said L. then and there unlawfully did expell, and the said L. so from the same Messuage, &c. and from his Possession expelled, from the said first day of May in the said year, &c. untill the taking of this Inquisition, unlawfully and with strong hand, have kept out, and detained, and do still keep out, and detaine, to the great damage of the said Lc. ontrary to the form of the said Statute, and against the peace.

Note. If there be an Indictment of forcible entry, if it appear that the Plaintiffe had seisin at the time of the Writ brought, there can be no Writ of restitution. For the Statute saith, if he enter with force, or keep him out with force; but yet in that case the King shall have his fine.

Pasch. 15. Cdr. There was an Indictment, That the defendaunt *ad tunc & adhuc* doth keep the possession forcibly, whereas the Plaintiffe was in possession, and thereupon a Writ of restitution was awarded, by reason of the word (*adhuc*) and adjudged, that both are punishable, although the Statute of 8. Henry 6. be in the disjunctive.

And *Note*, That no man can maintain this action but he that hath the Freehold in the Lands or Tenements at least, for Tenant for term of years, cannot

not maintain this action, because the words of the Statute be, *Expulit & disseisnit*, Tenant for term of years cannot be disseised.

One joynt-Tenant, or Tenant in common may maintain an Action, or indict his companion if he oust him by force. *Fitz. Nat. Br. fol. 249. D.*

And if a man enter by force, and detain with force, any Lands or Tenements, the party grieved may have a Writ, upon the Statute of Northampton made 3. Ed. 3. cap. Pasch. 1. and 2. 8.

Pasch. 1. and 2. H. 8. A forcible entry was found before *Fineux*, and other Iustices of *Oyer and Terminer*, and afterwards the Record was sent into the Kings Bench, where he that was ousted prayed to be restored: And this matter being argued in the Exchequer Chamber before all the Judges of England; the doubt rested upon two Points:

1. Whether the Iustices *Oyer and Terminer* have authority by their Commission to enquire of a forcible entry.

2. Admitting they could, then whether they might award a Writ of Restitution — and it was clearly agreed, That when such an indictment taken before the Iustices of the Peace is come into the Kings Bench, they may award a Writ of Restitution as well as the Iustices of Peace below. And after severall Arguments *Pro & Con* concerning the power of the Iustices of *Oyer and Terminer* by their Commission. It was in Conclusion agreed by all, that by the words of their Commission they have not power to enquire of a forcible entry. *Kelm. Reports fol. 159.*

The Reason of which judgement is given 4. and 5. P. and Mar. For that the Statute hath given power to the Iustices of the Peace, and this power cannot be transferred to other persons by another

another Commission. Yet if such indictment be taken before the Iustices of the Peace, and before the Writ of Restitution be awarded by them, it be removed into the Kings Bench; Now the Iustices of the Kings Bench may award a Writ of Restitution, and they may award it, notwithstanding that the Indictment make no mention that it was taken at the request of the party. *Dallison Rep. fol. 204. of Kelm. Rep.*

Pasch. 3. and 4. P. and Mar.

IN a Case of a Riot in the Starr-Chamber between Delaber and Leister, it was held for Law, that if a man hath been in peaceable and quiet possession three years and more by a good Title, and expelled by force and disseised, and the party thereof indicted upon the Statute of 8. And the disseised who was expelled be restored to his Possession by Writ of Restitution, and be in possession accordingly, that now he cannot justify a detainer of the possession by force by the *Proviso* of that Statute, because his possession hath been interrupted, and discontinued; and if the rightful possessor for twenty years be once removed out of his possession clearly, he may not come again with a multitude and force to put himself into the possession, *Dyer fol. 142.*

Hugh Evans Under-Sheriffe of *Midd.* and others came to the house of one *Parcke* to arrest one *Potter* who lay there, and came and knockt at the door of *Parker*, whose wife came to the door and opened it a little to see who was there, and they presently with their Swords drawne, rushed in upon her whether she would or no, and bare her down, and break open the Chamber door, and break also the house of one *Percivall* adjoining to it, to get Instruments
to

to break doors withall, and did hurt divers in the house, which first entry being by craft held unlawfull, the Sheriffe and the others were fined at twenty pound apiece, *Hobarts fol. Rep. 86.*

Paul Barrow preferred a Bill in the Star-Chamber against *M. Lewellin* for writing unto him a spitefull and reproachfull Letter, which was sealed and delivered, and never otherwise published; and it was resolved, though in this Case the Plaintiffe could not have an action of the case at Law, because it was not published, and therefore could not be to his defamation without his own fault of divulging it, and all actions in that kinde do suppose *in auditu quam plurimum propalavit, &c.* yet the Star Chamber for the King doth take knowledge of such causes and punish them, because that such quarrellous Letters tend to the breach of the Peace, and the stirring of Challings and Quarrels, and the defendant fined, *Hob. Rep fol. 86.*

Rescous is not made but where one hath the possession of the beast, or other things which shall be said to be rescued from him, for if one come to attach a man, or to distraine, and is hindred from so doing, he shall not have a Writ of *Rescous* and the King shall not have a Writ of *rescous* done to his Officer, but he may cause him to be indicted, *P. 20. Ed. 3.*

Te m. Mich. 15. Car. Counsell moved to quash an indictment for rescous, because it is shewed that the rescous was at *W.* and doth not shew that *W.* was within the County, and if it was not within the County, then it was an escape, and no rescous, and we cannot averr in this Case, that it was out of the Countrey. Further it was not shewed where the rescous was, so that upon the matter, it is no arrest, nor was the indictment *vi & armis*, as it ought to be. — As to the first exception

ception the Court strongly inclined, that they might well intend it to be within the County, because the indictment saith, in *Comitatu meo apud de-
trut.* but for the other exceptions the indictment was quashed.

If a man command his servant to distraine for rent, or for service, or for damage feasant, and rescous is made upon the servant, the Master shall have the Writ of rescous not the servant, for the wrong is done to him to whom the rent or service was due. *Fitz Nat. Br fol. 101.*

But if the Collector or Under-Collector distrain for Fifteens, and rescous be made upon him, then he shall have the Writ of rescous.

And if the Bailiffs or Officers attach certain persons, and other men rescue them from the Officer, then he for whose cause they were attached shall have a Writ of rescous. *ibidem. H.*

But if the Kings Bayliffe distrain for rent, and rescous be made upon him, the Bayliff shall have the Writ of rescous, and not the King. *Fitz Nat. Br. fol. 102. B.*

The Sheriffe of a County made a Warrant *Balivis suis* to arrest the body of such a man, and the Bayliffe of the Liberty return a rescous, and exception was taken to it, because that the Warrant was *Balivis suis*, and the return was made by those who were not his Bayliffs; and it was adjudged good, for the Liberty might be within his Bayliwicke, and so were all the presidents. Another Exception was because the place of the rescous was not shewed, and for that the Book of 10. *Ed. 4.* was cited, for there the rescous was *ad tunc & ibidem*, and did not shew the place. To that it was Answered by the Court, & agreed, that *ad tunc & ibidem*, is altogether uncertain if the place be not shewed. But in the principall

principall Case, the place was shewed at the first, and alwayes after that *ad tunc ad ibidem* only without naming of the place, and adjudged good for that *tunc & ibidem*, throughout the declaration hath reference to the place first shewed, and it was adjudged good. *Shepherds Report fol. 25.*

Hillar. 5. H. 8.

THe Sheriffe of *Devon* returned a *Rescous* upon a *Capias* in Trespals, against the defendant, and against divers others who were strangers to the suit, whereupon it was prayed for the Rescouers, that they might put in Sureties for their Fines by Attorney. And the Opinon of the Court was, that they should not be received, but that first they ought to yeeld themselves to prison, and thereupon to put in their Sureties, and the next day after they tendred their Traverse to the *Rescous* by Attorney, and were received; and it was said, that they shall not be received to Traverse by Attorney, in case were a *Cepi Corpus* hath been returned against them. *Kelw. Rep. fol. 166.* Upon which the Reporter gives a *Nota*.

Trin. 7. Eliz.

IT was the last day of this Terme agreed by all the Iustices *in banco*, That the returne of the Sheriffe made to his Bailiffe errant, &c. *verum istius brevis, &c. mandavi Ballivo itineranti, & qui mihi respondet quod arrestavit, &c.* and setteth down the cerrynty of the day, year, and place where the *Rescous* was made, &c. it was not good, because the arrest is the proper arrest of the Sheriffe himself, and no credit is to be given to the Answer of the Bayliffe errant; but otherwise it is of a Bayliffe of a Franchise, *Dyer fol. 241.*

For a riotous Assault.

Durham, ss.

THe Jurors, &c. do present, That *Cuthbert P.* late of B. in the County of D. aforesaid Yeoman, and D. L. late of B. aforesaid Yeoman, gathering to them many other Malefactors and Disturbers of the Peace of the Keepers of the Liberty of England, &c. to the Jurors unknown, to the number of ten persons unknown, the second day of *June*, in the year of our Lord God, 1652. A. M. in the said County of D. with force and armes, that is to say, with Staves, Swords, Daggers, and other armes, and Armour, as well invasive as defensive, did riotously and rourroussly, and unlawfully, unite, gather, and assemble themselves together, to the great terror of the people, with intent to disturbe the peace of the Keepers And so being gathered and assembled together, then and there with force and armes, and riotuously in and upon T. I. then and there in the peace of God, and of the Keepers, &c. being, an assault and affray did make; and him the said T. I. then and there with force and armes, and riotously did strike, beat, wound, and evil intreat, so that he despaired of his life, and other hurts to him the said T. I. did, to the great damage of the said T. I. contrary to the forme of divers Statutes in such case made and provided, and against the peace, &c.

For a Riot and rebellious assembly, upon the Statute of 1. Mary.

Lanc. ss.

THe Jurors, &c. do present, That A. B. (and Twelve at least, to be named with their additions

ons and dwelling places) the tenth of *November* in the year of our Lord God 1652, between the hours of eight and ten of the clock in the forenoone of the same day at H in the said County of *Law.* with force and armes, as well invasive as defensive, that is to say, with Swords, Daggers, Staves, and Clubbs, did gather and assemble themselves together, and then and there so being assembled, intended, endeavoured, practised, and put in use, and with force and armes, unlawfully, and upon their owne authority, to cast down, cut, break, and destroy a Stone Wall, and closure of a Close and Parke of T. P. Esquier called H. Parke, with intent that the said Close and Park called H. Park, should remaine open, and not inclosed, and unlawfully to have a common way in the same Close and Park, and to destroy the Deer in the said Close and Park then being. And the Jurors do further upon their foresaid Oaths present, that upon complaint thereof made before I. B. one of the Justices of the Peace of the said County, All and singular the said A. B. &c. the rest, &c; then and there, by the said I. B. the Justices aforesaid were required, and commanded by Proclamation, in the name of the Keepers, &c; then and there by the said I. B. openly made, should in peaceable and quiet manner to withdraw, retire, depart and return to their habitations, places and dwellings from whence they came, which Proclamation then and there in forme aforesaid had and made, the said I. B. Justice, then and there with a high voice made one Oyes, and then and there these words following immediatly, and with a loud and audable voice did pronounce, saying, The Keepers of the Liberties of *England* by authority of Parliament, do straitly charge and command all persons being assembled, immediatly to disperse

disperse themselves and peaceably to depart to their own habitation, or to their lawfull business, upon the paines contained in the Act of Parliament lately made against unlawfull and rebellious Assemblies. And the Jurors aforesaid further upon their said Oaths do say; That notwithstanding the said Proclamation, in manner and forme aforesaid by the said I. B. the Iustice openly then and there had and made, Nevertheless all and singular the said A. B. &c. at H. aforesaid, by the space of one houre immediatly, and continually after the said Proclamation, so as aforesaid had and made, seditiously, and feloniously remained, and continued together, and after the requiring and command made by Proclamation in manner and forme aforesaid, with force and armes, and in a violent manner then and there the said stone-wall and inclosure of the said T. P. of the Close and Park aforesaid, feloniously did cut, break, and cast down, in great contempt of the said Keepers, and contrary to the Statute, &c. and against the peace.

3. Jac. in the Star-Chamber.

A Man tooke Corne in the night, to which he had right, and was punished for a Riot because of his Company.

For a felonious rescous.

Hunt. ff.

THE Jurors, &c. upon their Oaths do present, That the first day of *July*, in the year of our Lord God, 1652. one A. B. late of C. in the County of H. aforesaid Labourer, was taken and arrest

F. F.

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upon suspicion of Felony, that is to say, for stealing of one Cow of the said E. F. by the said A. B. feloniously, as the said E. F. then affirmed, taken and driven away, and that he immediately after was by the said E. F. unto one H. M. Constable of C. aforesaid, who afterwards, that is to say, the same first day of *July*, in the year aforesaid, the said A. B. in prison in the Stocks there did put, there to be safely kept, untill the said Constable could procure aid to bring the said A. B. before some Justice of the Peace in the County aforesaid to be examined, and that afterwards, that is to say, the said first day of *July*, in the year aforesaid, one E. L. late of M. in the said County of *Hunt*. Labourer, with force and armes the Stocks aforesaid did break, and the same A. B. then and there being, out of the same Custody, Prison and Stocks feloniously did take away and rescue, and suffered him to escape and go away, against the peace, &c.

For a rescous upon a Bailiffe.

Lanc. ss.

THe Jurors, &c. upon their Oath do present, That whereas I. R. Bailiff of the said Keepers, &c. of *Derby* by vertue of a precept of the said Keepers of *Levati facias* to him directed by H. N. Gent. Steward of the Wapentake Court of the said Keepers, &c. of *Derby*, did take one Brass Pot of the Goods and Chattells of E. K. the relict of I. K. of W. in the County of *Lanc.* to take and levy the sum of six shillings eight pence against the said E. K. recovered in the foresaid Court of the said Keepers of *Derby*, to the use of R. H. of N. in the County aforesaid Gentleman, according to the forme and effect of the precept aforesaid: R. K.

late of W. aforesaid, in the County aforesaid Husbandman, the day of *September* in the year of our Lord God 1649. at W. aforesaid, in the County aforesaid, with force and armes, the said Por from the said Bailiffe, did take and rescue; and thereby the said Bailiff in the execution of the said Office, did obstruct and hinder with force and armes as aforesaid, in contempt of the Keepers, *&c.* and to the evill example of other Malefactors, and against the peace.

For a rescous upon distraining for Rent

York. B.

THe Jurors, *&c.* do present, That whereas A. B. late of C. in the County of *Torke*, aforesaid Husbandman, the tenth of *September*, in the year of our Lord God 1652. was seised in Fee of twenty Acres of Land with the Appurtenances at M. in the said County of *Tork*, which I. H. then held of the said A. B. for terme of his life, by certain Services for yearly Customes and Services, which being to him the said A. B. then due and arreare, he caused R. B. his servant to take and distraine one Cow of the said I. H. then being and depasturing in the said twenty Acres of Land, and the said R. B. the said Cow then and there taken and distrained, in the name of a distress, according to the Law and Custome of this Common-wealth of *England* unto the Common pound at M. in the County aforesaid, would then and there have driven, and there to have kept the same; Nevertheless, one R. H. late of M. in the County aforesaid Husbandman, and J. K. and L. M. *&c.* the said tenth of *September*, in the year aforesaid, at M. aforesaid, in the County aforesaid, with force and armes, that is to say, with

Staves, Daggers, Clubs and other Weapons, as well in yative as defensive, did unite and riotously and unlawfully did assemble together, with intention to disturb the peace of the Common wealth, and so being united and assembled, in and upon the said R. B. in the peace of God and of the Keepers of the Liberty, &c. being, did make an assault, and him the said R. B. then and there, with force and armes, and riotously did strike, beat, and evill intreat; And the aforesaid Cow then and there, that is to say, in the said twenty Acres of Land at M. aforesaid so distrained from the said R. B. with force and armes riotously did rescue and take away, and other harmes to the said A. B. and R. B. then and there with force and armes and riotously did do, to the great damage of the said A. B. and R. B. and contrary to the Statute, &c. and against the peace.

For a rescue, for taking one from a Constable, who had attached him upon a Justice of Peace his Warrant.

Lanc.

THe Jurors, &c. do present, That whereas James Gee, Constable of A. in the said County of Lanc. by vertue of a certain Warrant to him directed under the Seal of R. E. one of the Justices of the peace of the said County, did take and attach one T. B. to do and receive according to the tenor of the said Warrant; Nevertheless one G. O. late of A. in the said County Husbandman; And L. M. N. P. (and such as are to be indicted) the tenth day of April, in the year of our Lord God 1652. At A. aforesaid, with force and armes, that is to say, with Staves, Swords, Daggers, Clubs, and other Weapons as well

well invasive as defensive, did riotously unite, and unlawfully assemble, and gather themselves together to the great terror of the people, and with intent to disturb the peace of the Common-wealth, and so being united, assembled, and gathered together, then and there with force and armes and riotously in and upon the said I. G. in the peace of God of the Keepers of the Liberty of England being, d.d make an assault, and him the said T. B. with force and armes, out of the custody of the said Constable riotously did take and rescue, and the said T. B. himself out of the custody of the said Constable, then and there did likewise rescue, to the great damage of the said Constable, and contrary to the forme of divers Statutes in that case made and provided, and against the peace, &c.

*For rescuing Cattell taking damage Fe-
sant.*

Linc. B.

THE Jurors, &c do present, That A. B. the first of *April*, in the year of our Lord God 1652. was possessed of, and in the Manor of H. with the Appurtenances in the County of L. aforesaid, the same A. the same day and year at H. aforesaid, in the County aforesaid, did finde certaine Cattell, that is to say, six Oxen, four Kine, in a certain Field, containing by estimation twenty Acres of Pasture, parcell of the Mannor of H. aforesaid, there doing damage, which said Cattell, so then and there doing damage aforesaid I. R. and one S. T. the day and year aforesaid, in the name of a distress, then and there did take, and unto S. in the County aforesaid did drive, where according to the Law and Custome of the Common-wealth of England, in a

certain common pound there would have impounded, Nevertheless, one T. B. of G. in the County aforesaid Husbandman, and S. L. of G. aforesaid in the County aforesaid Labourer, with force and armes the day and year aforesaid, at S. aforesaid in the County aforesaid, in and upon the said I. R. and S. did make an assault, and the said Cartell, then and there, with force and armes from the said I. R. and S. T. did take aid rescue, contrary to the forme of the Statute, and against the peace.

For rescuing of a man taken by a Bailiffe upon a Cap. ad respondend.

Salop. ff.

THe Jurors, &c. do present, That whereas K. L. Esquire, Sheriff of the County of *Salop*, by virtue of a Writ of the Keepers of the Liberty of *England* by authority of Parliament, to him directed, the second day of *July*, in the year, &c. 1653. did make a certaine precept sealed with his Seale to I. P. and L. M. his known and sworne Bayliffs to take R. S. late of T. in the said County Yeoman, and him safely to keep; so that the said Sheriff might have the body of the said R. S. before the Justices of the said Keepers at *Westminster*, in one moneth after *Michaelmas*, to answer unto G. H. of a Plea that he should render unto him five pounds which he owed and unjustly detained from him, as he said. And whereas the said I. P. and L. M. with the said precept at W. in the County aforesaid, the tenth day of *August* in the same year, did go unto him the said R. S. and him the said R. S. by virtue of the said precept did take and arrest; Nevertheless the said R. S. and one T. R. late of T. in the said County Yeoman

man, and G. H. late of T, aforesaid, in the County aforesaid Labourer, the said tenth day of *August*, in the year aforesaid, with force and armes, that is to say, with Swords and Daggers, Staves and Clubs, and other weapons and armes, as well invasive as defensive, did riotously unite and gather themselves together, and unlawfully assemble, to the great terror of the people, with intent to disturb the peace, and being so united, gathered together and assembled, then and there, with force and armes, and riotously in and upon the said Bayliff, did make an assault, and the said R. S. and T. R. the foresaid R. S. out of the custody of the Bayliffe with force and armes, and riotously did take and rescue, and suffered him to go at large. And the said R. S. did likewise riscue himselfe out of the custody of the said Bayliff, to the great damage, &c. and against the peace, &c.

Having hitherto given some Presidents of Indictments of the highest nature, and which concerne mans life, and some Observations thereupon; I conceive it will not be unmethodicall in the next place to set down some which concerneth that which is next our lives, that is, our good names, whereof I will shew but two or three which mutatis mutandis, may serve for many of the like nature.

For slandering a Judge of Assise.

Lanc. B.

THe Jurors, &c. do present, That whereas *David Pinnington*, late of A, in the County aforesaid,

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Yeoman at A. aforesaid, in the County^r aforesaid, and N. P. late of, &c. Labourer, with force and armes, feloniously, and of their malice forethought one W. W. in the year of our Lord God, 1650. had slain and murdered; And whereas afterwards, that is to say, the first day of May, in the year of our Lord God 1651. One Thomas Cudlaw at L. in the County of Lanc. in consideration of eighteen pound of lawfull money of England, to him by one I. P. contented and paid, undertook that the murder of the said W. W. before the Justices, &c. at Lanc. then next to be holden, should be presented and found against the said D. P. Manslaughter only, and not murder. And whereas also afterwards, viz. (such a day and year) at Lanc. in the County of Lanc. before I. B. and F. R. two Justices of the Keepers of the Libertie, &c. at the generall Goale delivery, then and there holden by the Oathes of twelve good and lawfull men of the County of Lanc. it was found and presented, That the aforesaid D. P. and W. P. with force and armes feloniously and of their malice forethought, the said W. W. did kill and murder, and so the killing of the said W. W. then and there was found murder, and not manslaughter only. By reason whereof the said I. P. required the said T. C. to pay back the said 18. pound to the said I. which money the said T. C. did altogether refuse to pay to the said I. P. saying, and alledging that he had given and paid the said 18. pound to certain persons, viz. to the said F. R. one of the Justices aforesaid ten pound, That the said T. C. late of &c. in the County aforesaid Yeoman, the first day of June, in the same year at Lanc. aforesaid, in the County aforesaid, maliciously, contemptuously, and opprobriously to the publick reproach, scandal and defamation of the foresaid

F. R.

F. R. being one of the Iustices aforesaid his degree and dignity, did openly and publikely speak and utter these false, feined, scandalous and approbrious words following. *viz.* That Justice R. meaning the said F. R. had ten pounds, meaning 10. l. part of the foresaid eighteen pound; whereas in truth no such thing was ever by the said F. R. ever received, toucht or thought. By reason of the speaking and uttering of the said words, the said T. C. the said F. R. his estate, degree and dignity, hath brought into great reproach and contempt, as well among the Nobility, and great men of this Commonwealth, as also among other good and faithfull people thereof, and contrary to the forme of divers Statutes in that Case made and provided.

For a slanderous Writing and publishing thereof against the Keepers of the Liberty, &c.

Midd. ss.

THE Jurors, &c. do present, That A. B. late of C. in the County of *Midd.* aforesaid Taylor, the tenth day of *July*, in the year of our Lord God, &c. at G. in the County of *Midd.* aforesaid, of set purpose and deliberately, and with a malicious intent, and feloniously did set forth, and publish a Writing in *English*, containing (among other things) this false, seditious and scandalous matter, to the defamation of the Keepers of the Liberty of *England*, by authority of Parliament, (*viz.*) reciting the words) against the peace, and contrary to the Statute, &c.

For

For slandering a common person.

Somerset. *ss.*

THe Jurors, &c. do present. That whereas A. B. of C. in the County aforesaid Yeoman, hath alwayes been of good Name and fame, and of honest behaviour and conversation, and without any scandall, and without any staine of Robbery, theft, or any other Crime, and without any Scandall of the same, and from all manner of deceits and frauds and evill doings, and hath been from the time of his Birth untill this time well behaved and governed, and of such estate, conversation, and honesty, hath been among all his neighbours, and all other people of this Nation to whom he was known, without any whatsoever criminous wickedness of Robbery, theft, or any other fraud, or other such like crime heretofore charged upon him, or suspected of. Nevertheless one P. S. late of Q. in the County aforesaid *Weaver*, knowing the premises to be true, by the instigation of the devill, and his own perverse malice, intending the estate, honesty, and Opinion, of the said A. to deprave and hurt; and the said A. to be taken to be of so evil conversation, condition and behaviour towards all the good and faithfull people of this Nation, that he the said A. should utterly perish and be destroyed, and that all the faithfull people of this Nation should withdraw themselves from his Society and Company — such a day and year, &c. at P. in the County aforesaid, in the presence and hearing of T. S. and of divers other credible persons to the said A. known of the said A. did speak, report, publish, and with a loud voice, pronounce these *English* words following, viz. A. B. Is acquainted with all the Rogues

rogues and Thieves in the Countrey, and doth harbour many known Thieves in his house. By reason of the speaking, uttering and relation of which words, the said A. B. in his Estate, good Name, and his affairs with honest men with whom he had commerce, is very much hurt and damaged, & contrary to the peace.

Vltius Caesar, Iudge of the Admiralty Court, brought an Action upon the Case for Slander, against Phillip Curtaine a Merchant stranger, for saying the said Caesar had given a corrupt Sentence, and upon a Not Guilty Pleaded, and upon the triall two hundred Marks given in damages. There was something spoken in arrest of Judgement, but not allowed, and so the Verdict confirmed. Poph. Rep. fol. 35.

Though this last Case doth not properly concerne the peace, yet finding it to have some reference to the title of slander of Iudges; I thought it not amiss to insert it, that the Reader may see for what words the Action of the Case lieth.

Upper Bench.

IN former times before the Statute of 37. H. 8. the party indicted for Treason, Murder, Felony, or Trespas, &c. used to take exception against the forme of the Indictment, in which the words (with force and armes) that is to say, with Staves, Knives, Bows and Arrows, or such like words, for want whereof they took advantage and avoided the same by Writs of Error, or by Plea, upon the appearance of the party indicted. But by that Statute it was declared and enacted; That such words should not necessarily

necessarily be comprised in the Indictments, but that the same should be as good and effectually in Law without them as with them.

All Offences against the peace of the Kingdome or Common-wealth are inquired and tried, either at the upper Bench, or at the Goale Delivery, before the Justices Itinerant, or others, authorised by Commission, under the of Seal of England, or at the generall Quarter Session of every County.

And whereas by the Common Law of this Nation every offence was to be inquired of and tryed in the proper County where the offence was perpetrated; By the Statute of 33. H. 8. cap. 26. It was enacted; That if any person being examined before the Kings Councell, upon any manner of Treason, misprision of Treason or Murder, do confels any such offence, or be vehemently suspected thereof, That then in every such case by the Kings Commandement, his Majesties Commission of Oyer and Terminer, under his great Seale, shall be made by the Chancellor of England to such persons, and in to such Shires and places, as shall be named by the Kings Highness, which Commissioners shall have power to enquire of, heare and determine all such offences within the Shires and Places limited by their Commissions.

And by the Statute of 1. and 2. Ph. and Mary cap. 10. It was enacted, That all manner of offences already made and declared, or hereafter to be made

made and declared, by any Laws or Statutes of the Realme to be Treasons, Misprisions of Treasons, or concealments of Treasons done or committed by any person or persons out of the Realme of England, should be inquired of, heard and determined before the Iustices of his Bench for Pleas, before him to be holden, by good and lawfull men of the same Shire where the said Bench shall sit, and be kept, or else before such Commissioners and in such Shire of the Realme as shall be assigned by the said Commission, and by the same Jurors of the same Shire in like manner and forme, to all intents and purposes, as if such offences had been committed within the same Shire where the same shall be inquired as aforesaid.

By which two Statutes it appears, That the crimes of high Treason, Misprision of Treason, and concealments of Treason, may be inquired of heard and determined, either by the Iudges of the upper Bench wheresoever it sits, or by the Kings Commission in any place of the Kingdome by his appointment.

But for Felonies and all sorts of offences under Treason it is not so; They must be enquired of, heard and determined, in the proper County where the offence is committed, and not elsewhere, unless the indictment be in the Crown Office of the upper Bench, which holds Plea of all matters which concerne the peace of the King or Common wealth, and doth therefore take cognizance of any offence which in the time of Kings was against the peace of the Lord the King his Crown and dignity, and is now against the peace of the Keepers of the Liberty of England, by the authority of Parliament.

And under this notion in this Court of the upper Bench are enquirable all treasons heretofore against the person of the King, and such other offences as are specified in the said Statute of 21, Ed. 3. and all petty Treasons, and all other Treasons by the Common, or Statute Law, all murders, Rapes, and other Felonies by either of those Laws, there being some of the one kinde and some of the other.

All Riots and routs, all unlawfull Assemblies, Burglaries, Robberies, Thefts, and Larceny. And all accessories to such offences, and of all manner of trespasses against the peace. The severall species of all which offences are particularly set downe by M. Dalton in his Justice of peace, to which (because I will not (while I am writing thereof) commit Felony by stealing so much out of another mans Book) I referre the Reader.

The Lord Chiefe Justice of the Upper Bench (heretofore called the *Kings Bench*) and improperly called Lord Chiefe Justice of *England*, which the King only is; and the other the chiefe Coroner of *England*, is the chiefe Judge of all causes of which that Court holds plea, and because he hath the chiefe ordering of all matters which belong to the conservation of the peace of the Commonwealth, he is in (reference thereunto) in all Commissions of the peace, and *Oyer & Terminer* throughout the whole Nation, and doth commonly when he pleaseth sit as chiefe Judge at the Sessions for *Middlesex*, and in his absence the other Iustices of the same Court may and do heare and determine any Causes brought before them, which concern the peace.

All such Indictments as are at the Upper Bench are brought and filed in the Crown Office belonging to that Court, The Master of which Office hath the keeping of all the Records which do concerne criminall Causes, receives all indictments, and files them. And by the Clerks of the Office, gives out Copies of all such Indictments, as they may lawfully make, as for trespass, misdemeanours, Riots, Routs, Informations upon penall Statutes, for which is paid eight pence a sheet. But of Indictments for Felony, or any other offence of a higher nature, they may not make Copies, but by warrant from the Attorney generall of the Common-wealth.

He makes out all process against persons there indicted, untill they appeare, or are out-lawed; and when they do appeare by some of the Clerks, enters their Appearance, Receives, and Records all traverses, and other Pleas to Indictments, which are brought into the said Office.

Makes all Writs of *Certiorari* for removing of any Indictments out of any County, either at the Goal delivery, or Quarter Session, which are returnable in that Court, — for which he hath. —

And by himself, or his Secondary Arraigns all prisoners which are there to be tried for any criminall cause.

If a man be Indicted in that Court for treason, or murder, or any other crime, for which he is not bailcable, and after be taken upon process, he is committed

committed to prison till he come to his triall, which shall be at the discretion of the Court.

Proceedings upon Indictments.

But if he be taken upon trespass, &c. or any Felony, for which he is baileable, and shall give bond or recognizance for his appearances at such time as in the recognizance is limited, he shall go at large till he come to his triall, which shall be at the pleasure of the Court, for entring of which bail he payes. —

But if the party indicted for any offence, doth not come and appear gratis; the Court awards first a *Venire facias*, and after that a *Distingas*, which may be renewed as often as the Court pleaseth, if the person offending have any visible estate by which he may be distrained; but if the Sheriff return that he hath nothing by which he can be distrained, then doth the Court award a *Capias alias*, and *Pluries*, untill the party be outlawed, by which he forfeits all his goods; all which process bear *Teste* under the name of the Chiefe Iustice, and when there is none, then under the *Teste* of the eldest Iudge of that Court.

In like manner, if a man be indicted at the generall Sessions of the Peace, or at any privie Sessions, and do not appear gratis; the Court there will award process to bring him in to answer; first a *Venire facias*, and then a *Distringas*; and in case there be no distress to be taken, then an *alias* and *Pluries*, untill the party be outlawed, as aforesaid, which Writs are now in the name of the Keepers of the Liberty of England, but the *Teste* is under the

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the name of the *Gustos rotulorum*, and are thus formed.

The Venire facias.

THe Keepers of the Liberty of *England*, To the Sheriff of *Kent* Greeting. We command you, that you omit not for any Liberty within your Liberty; but that you make A. B. of C. in your County Yeoman, to come before our Justices for the conservation of the Peace, and divers Felonies, Trespasses, &c. to hear and determine assigned, at the next generall Sessions of the peace for the said County to be holden, to answer unto us upon certain Articles, upon which he is presented, and that you may have there this Precept, Witness, &c.

The Distringas thus

THe Keepers of the Liberty of *England*, &c. To the Sheriffe of the County of *Kent* Greeting. We command you that you omit not for any Liberty within your Bayliwick, but that you enter the same, and distrain A. B. of C. in your County Yeoman, by all his Lands and Tenements, Goods and Chattells, And that of the issues thereof, you answer us, &c. And that you have his body before our Iustices, &c. to answer unto us, &c. Witness, &c.

N

The

The Capias thus.

THe Keepers, &c. To the Sheriffe of the County of Kent greeting. We command you that you omit not for any Liberty within your Bayliwick, but that you enter the same, and take the body of A. B. of C. in your County Yeoman, and him cause to be safely kept, so that you may have his body before our Justices, &c. At the next generall Sessions of the peace for the said County to be holden to answer unto us upon divers trespasses, contempts and offences, of which he stands indicted. And that you have here this Writ, witness, &c.

Upon which Writ if the Sheriffe returne that the party is not to be found within his Bailiwick, there shall an alias Capias be awarded of this Tenor.

The Alias thus.

THe Keepers, &c. To the Sheriff, &c. We command you, as before we have commanded you, that you omit not for any liberty, &c. but you enter thereinto, and take the body of A. B. — as in the Capias, &c.

And if the Sheriffe make the like return, then is a Pluries awarded, of this tenor.

The Pluries thus.

THe Keepers, &c. To the Sheriff, &c. We command you, as often we have commanded you,
That

That you omit not for any liberty, &c. But that you enter thereinto, and take the body of A. B. &c. as in the *Alias*.

Upon which Writ. if the Sheriff return that the party is not to be found, and that he came not, then an Exigent is awarded, in this manner.

The Exigent.

THE Keepers of the Liberty of England, to the Sheriff of K. &c. Greeting. We command you to call A. B. of C. in your County Yeoman, untill according to the Law and Custome of England he be outlawed, if he shall not appear; and if he shall appear, that then you take him, and cause him safely to be kept, so that you may have his body before our Iustices, &c. at the next generall Sessions of the Peace for the said County to be holden, to answer unto us for divers trespasses, contempts, and offences, of which he stands indicted, and that you have this Writ, Witness, &c.

If upon this Writ the Sheriffe return, That at five County dayes after the date thereof, the party was called and did not appear; he is thereupon out-lawed, and then the power of the Iustices doth determine, they having no power to make a Capias Utlagatum, but must returne the Utlarie into the Upper Bench, who will thereupon --- proceed according to the course of the Law in such case used.

A N E X I G E N T

for a forcible Entry.

THe Reepers, &c. To the Sheriff of G. greeting.
 We command that you do call, or cause to be called, C. D. of *London* Esquire from County to County, untill by the Law and Custome of *England* he be outlawed if he do not appear, and if he do appear, that then you take him, and cause him to be safely kept; so that you may have his body before us in the *Ostaves* of St. *Hill*. next coming, wheresoever we shall be in *England*, to answer unto us for certain trespasses and contempts against the Statute concerning forcible entries made and enacted, whereof he is indicted, and whereof you have at another time returned, that he was not to be found within your Bayliwick; and that you have there this Writ, Witness H.R. at *Westminster*, &c.

But if the party indicted will either appear gratis, or before he be put to the *Exigent*, the offence being for Riots, Routs, forcible entry, or detainer, trespass, or breach of penall Statutes, or any thing less then Felony, he may remove the indictment, by Writ of *Certiorari*, either out of the Chancery or upper Bench; or he may enter his traverse, or take exceptions to the Indictment, either for the matter or forme thereof, or else to avoid further trouble and expence, submit himself to a Fine, which shall be imposed by the Justices of the Peace at their discretion, where the penalty for the offence is not certainly limited, by any Statute Law, in which cases they cannot mitigate the Fine, which must be paid according to the words of the Statute.

If the party indicted will traverse the indictment, he must enter into bond, or recognizance to the Keepers of the Liberty of *England* to prosecute the same with effect, and in order thereunto must sue forth process out of the Court, awarded to the Sheriff of the County to return a Jury for the triall of the merit of the cause the next Sessions, (if he be not at present ready) for which he payeth to the Clerk of the Peace three shillings four pence,

And albeit the party indicted do enter his traverse, yet he may afterwards wave and relinquish his traverse, and under protestation that he is not guilty, will nevertheless submit to his Fine,

And if he resolve to traverse, he may do it either by pleading the generall issue not guilty, or he may plead specially to the matter of the indictment, upon which speciall matter issue shall be taken, by the Clark of the Peace, (who in such cases is as the Attorney of the Common-wealth) and brought to a Triall, where if the Verdict pass for the party indicted, he shall be thereupon discharged, but if he be found guilty, he shall be Fined, and if the case so require, imprisoned, and the Fine returned into the Exchequer by the Clark of the Peace, under the hand of one of the Barons, who must have for his hand two shillings.

Proceedings upon Indictments.

BUT if the party indicted for any offence under Felony will take exception to the indictment, either for the matter or the form, he must by counsell acquaint the Court therewith, and if the Error

be apparent, the indictment shall be immediately quashed, and the party discharged; but if the matter be doubtfull, or difficult, the Iustices may, and ought by a Proviso in their Commission, to take time to consider thereof, and not to give judgement but in the presence of one of the Iustices of one or the other Bench, or the Iustice of Assize for that County assigned before the said Iustices of the peace, or two or more of them.

And if the party indicted be not willing to have his triall, either at the Goal delivery, or at the Quarter Sessions, he may remove the indictment by Writ of *Certiorari* out of the Upper Bench; and all other things that do concern the same, which may be done by the severall Writs hereafter expressed.

C*ertiorari* is a Writ to remove Indictments, or other Records in causes wherein the Iustices cannot proceede, and issueth out of the Chancery, whither the Records are sent, and from thence by *Mittimus* to any other Court; and it may command either the Record it self or the renour of the Record. *Crompt.* 131. *Dalt.* 416. and is to be directed to the Iustices. *Lamb.* 515.

No Bills of indictment of Riot, Forcible entry, Assault or Battery found at the Quarter Sessions shall be removed by *Certiorari*, unless it be delivered in open Quarter Sessions, and the indicted bound in ten pound to prosecute, &c. 41. *Jac. cap.* 8.

A Certiorari upon an indictment for a forcible entry.

Lincoln.

THe Keepers of the Liberty of England, &c. To the conservators of our Peace, and to our Iustices, for divers Felonies, &c. assigned, Greeting. Our will being for certain causes, that all Indictments concerning certain trespasses and contempts contrary to the form of the Statute for forcible entries made and enacted, and other articles and offences, whereof A. B. of C. in the County aforesaid, Yeoman, and all others in the foresaid Indictment named, before you are indicted (as is said) shall be determined before us, and not elsewhere: We do therefore command you, and every of you, That all and singular the Indictments aforesaid, with all things concerning the same, by what names so ever the said A. B. and all the rest be called in the same Indictments, you, or one of you, do send unto us under your Seals in the *Ostaves* of *S. Hilary*, where-soever we shall be in *England*; That we may further do therein as according to Law, and the Custom of *England* shall seeme good unto us. Witness H. R. &c.

A Certiorari to the Justices of the Goal Delivery.

War. ff.

THe Keepers, &c. To our Iustices for our Goal delivery in the County of *War.* from the prison there being to be delivered assigned, greeting: Our will being for certaine causes, that all and singular Indictments of a certain Felony and murder, where-

whereof W. P. and all other in the same indictments named lately before our Justices, to heare and determine divers Felonies, Trespasses and other misdeeds in the County of *warwick*, assigned, and before you now being, by what name the said W. P. and all others in the same Indictment are called, should be determined before us, and not elsewhere, We command you, and every of you under your Seals, or the Seals of one of you, to send the same unto us in the *Ottaves*, &c. together with this Writ, &c.

A Certiorari for an Indictment and Utlawry.

THe Keepers of the, &c. To the Justices of the peace, &c. Our will being for certain causes, that all and singular Indictments concerning certain Felonies and Trespasses, whereof R. O. before you stands indicted (as it is said) should be determined before us, and not elsewhere; We command you and every of you, that all and singular Indictments, together with an Utlawry, if any such be upon these occasions, or any of them shall be published against him, with all things touching the same, by what name the said R. be called in the same, you send unto us under the Seales of you, or one of you in fifteen dayes after *Easter* next, where-soever we shall be, &c. or shew cause unto us why you would not, or could not execute our former Writ concerning the same to you directed, and that you have there this Writ, Witness H. R. &c.

A Certiorari

A Certiorari at the Sheriffs Turn.

THe Keepers, &c. To the Sheriff of the County of Hertford, Greeting, Our will being for certain causes, that all and singular Indictments for whatsoever Felonies and Trespases, wherof A. B. of C. in your Turn, lately held, is indicted (as it is said) before us by you to be sent; We command you that the said Indictments, with all things concerning the same, so fully and entirely, as before you the same were lately taken, and are now in your keeping (as it is said) by what name soever the said A. be called in the same, you send unto us under your seal, (such a day) wheresoever, &c. together with this VVrit.

A Certiorari from the Bailiff of a Mannor.

THe Keepers, &c. To the Bailiffs of the Mannor of N. greeting, willing for certain causes all and singular indictments of divers trespases, wherof T. B. before you at the view of Frank pledge, there lately held, he is indicted (as it is said) should be determined before us, and not elsewhere. VVe do therefore will and command you, that all and singular Indictments, with all things concerning the same, by what name soever the said T. be called before us, under the seals of you or one of you, wheresoever we shall be, &c. you do send together with this VVrit, &c.

A Certiorari to the Steward and Bayliffs of a Mannor.

THe Keepers, &c. To the Steward and Bailiffs of the Manor, Town, liberty, and hundred of C. and C. in the County of S. greeting, Willing for certain causes,

causes, all and singular Indictments, or Presentments, Fines, or Amerciaments whatsoever whereof R. P. is indicted, presented, or amerced before you, should be determined before us, & not elsewhere; we do therefore will and command you, that all Indictments, Presentments, and Amerciaments, with all things concerning the same, you or one of you, send unto us under your Seales, &c.

CERTIORARES.

Trin. 17, Car.

A. and B. are indicted for Murder, B. flies, and A. brings a *Certiorari* to remove the Indictment into the Kings Bench, whether the whole Record be removed, or but part was the Question. *Keeling* the yonger said, that all is removed, and that there cannot be a transcript in this case, because the Writ saith, *Recordum & professus cum omnibus ea tangentibus*. But the Chiefe Iustice doubted it, and he said that the Opinion of *Marckham* in one of the Books is against it, and he said, That it would be a mischeivous case if it should be so, for so the other might be attainted by Outlary who knew not of it. And (Note) that *Bramston* the Chiefe Iustice said, That the Clark of Assise might bring in the Indictment *propriis manibus* if he would without a *Certiorari*.

A man was indicted for Murder, in the County *Palatine* of *Durham*, and brought a *Certiorari* to remove the Indictment into the Kings Bench; and it was argued by *Keeling* at the Barr. That *Breve Dom. Regis non currit in comitat. Palatin.* But the Iustices there

there upon the Bench, viz. Heath and Bramston
 termed strongly to incline, that it might go into
 the County Palatine, and they said, there were ma-
 ny Presidents for it; and Justice Heath said, That
 although the King grant *Jura regalia*, yet it shall
 not exclude the King himself, that their power is
 not independent, but is corrigible by this Court,
 and he said that in this case the party was removed
 by *Habeas Corpus*, and by the same reason that a *Ha-
 beas Corpus* might go thither a *Certiorari* might, for
 which cause it was awarded, that they return the
Certiorari, and upon the returne they would debate
 it. *Shep. Rep. fol. 165.*

If a man be arraigned of Murder, and found
 guilty *se. defendendo*, by which he is committed to
 prison or bailed, now he may sue forth a *Certiorari* to
 remove the Record into the Chancery, that he
 may sue out his Charter of pardon of course. *Fitz.
 Nat. Br. fol. 246. C.*

Trin. 15. Carol.

TWO men and their wives were indicted upon the
 Statute of forcible entry, who brought a *Certio-
 rari* to remove the Indictment into the Kings
 Bench, some of them did refuse to be bound to pro-
 secute according to the Statute of 21. *Jac. cap. 8.*
 and therefore notwithstanding the *Certiorari*, did
 proceede to the trial upon the Indictment; And
 here it was resolved, That whereas the Statute is, *The
 parties Indicted shall be come bound, &c.* That if one of
 the parties offer to finde Sureties, although the o-
 thers will not, yet the cause shall be removed, for
 the denying of the one shall not prejudice the other
 of the benefite of the *Certiorari* which the Law
 gives

gives unto them, and the woman cannot be bound.

And it was further resolved, whereas the Statute saith, that the parties indicted, shall be bound in the summ of ten pound, with sufficient Sureties, such as the Iustices of Peace shall think fit. That if the Sureties be worth ten pounds, the Iustices cannot refuse them, because the Statute prescribes in what summ they shall be bound.

And it was further resolved, that after a *Certiorare* brought, and sufficient Sureties tendred according to the Statute; all the proceedings of the Iustices of the peace are *Coram non Iudice*.

And it was agreed by the Court, that upon a *Certiorare* to remove an Indictment out of an inferiour Court, that the defendant shall be bound in a Recognizance to prosecute with effect, *viz.* to traverse the Indictment, or to quash it, and if he doth not appeare, an Attachment shall issue out against him.

PYe informed against *Thrill*, upon the Statute of *Recusancy*, who pleaded, that he was indicted in *Middlesex* for the same offence, and *Certiorare*. the Plaintiffe said, *nul tiel Record*. and day was given to the defendant to bring the Record; whereupon he took a *Certiorare* out of this Court (*The Kings Bench*) and at the day brought *tenorem Recordi*, certified by *Sir Thomas Lake, Custos Rotulorum*. And it was holden cleere that the defendant needed not to take his *Certiorare* out of the Chancery, and so bring it hither by *Mittimus*, but this Court might send a *Certiorare* immediately to a inferiour Court. And the Certificate was disallowed, because it ought to have been made in the name of the Iustices of peace, before whom it was

was taken, according to the direction of the Writ, though the *Custos Rotulorum* keep the Records, and a *Certiorare* was awarded *de novo* to the Iustice of the Goale delivery, &c. *Hobjol* 182.

And now, having declared in what cases *Certioraries* are granted for removing Indictments and presentments, from the Iustices of the Goal delivery, Iustices of the Peace, Stewards, and Bayliffs of Mannors are usually granted, I shall here by one or two Presidents (which may serve for the direction and information of the Reader) set down the form of a *Procedendo*, to return and send back, the said Indictments and Presentments, to be tried and proceeded in, in the same Courts and places from which they are removed, the form whereof is as followeth, and may serve, *mutatis mutandis*, for any other cause whatsoever.

A Procedendo upon a Certiorari.

Procedendoes in Titulo.

THE Keepers of the Liberties, &c. To the Conservators of the peace, &c. Whereas we did of late for certain causes, command you, and every of you, that all and singular Indictments concerning all Felonies and treispases, whereof A.B. before you doth stand indicted (as it was said) with all things concerning the same, by what name soever the said A. was called in the same before you, under the seals of you, or one of you, at a certain day now past, wheresoever we should then be in *England*, you, or one of you should send unto us, together with the same Writ thereof to you directed; that we might further proceed therein as of right, according to the Laws and Custom of *England* belongeth. We for certain

certain causes in our Court before us moving, command you, and every of you, that from doing the execution of the said Writ, you do supersede; and to the determination of the said Felony and Trespas, with that celerity which of right, and according to the Custom aforesaid, as to you shall seem good, you do proceed, our said Writ to you as aforesaid directed notwithstanding. Witness H. R. at *Westminster, &c.*

A Procedendo upon a Habeas Corpus.

THe Keepers, &c. To the Mayor and Sheriffs of *London* greeting. Whereas we did by our Writ lately command you, that the bodies of A. B. and C. D. in our prison in the custody of you the said Sheriff detained (as is said) together with the cause of their detention in the same you shall have before us (at such a day last past) to do and receive such things as our Court before us should then and there consider. And we for certain causes in that behalf, us especially moving, do command you, that in whatsoever Pleas, Complaints, Indictments, or demands before you, or any of you, against the said A. B. and C. D. or either of them not determined, that you do proceed as of right, and according to the Custom of the City were to be proceeded, our command aforesaid to you in that behalf directed in any wise notwithstanding. Witness H. R. at *Westminster, &c.*

Warrants

Warrants.

And because the subject matter of this Work is concerning the conservation of the peace, and the punishment for the violators thereof; It will not be amiss that we take our rise from the first Acts which are done, and conduce to the preservation thereof, and the ordinary way to bring Delinquents to condigne and legall punishment for all such offences, upon which the severall indictments here before specified do arise and have their course. We will therefore begin with the forme of such Warrants as are commonly made by the Judges of Assise, or the Justices of the Peace, to bring in offenders, who are to be proceeded against, as shall hereafter be set forth; Which Warrants are granted upon such severall occasions as shall emerge: As Where a Felony, or other misdemeanour is done, or the person or persons offending not knowing; for the discovery thereof, the party offended may have recourse to some Justice of the Peace within the said County where the offence is committed, and crave his Warrant of this tenor.

A Warrant

*A Warrant to attach for suspicious persons.**Kent.*

WHereas A.B. of C. in this County, Yeoman, hath informed me, that this present day, being the day of this instant moneth of M. between the hours of seven and eight of the clock in the forenoon, he was by three several persons, unknown, assailed in the high-way, between the Towns of E. and F. in the Hundred of G. and by them beaten, and evill intreated, and put in great fear of his life, and had twenty pounds in money taken from his person. These are therefore to will and require you, and in the name of the Keepers of the Liberty of *England*, by authority of Parliament, straitly to charge and command you immediately upon receipt hereof, to make diligent search and enquiry within your severall Liberties and Precincts (especially in all suspicious places) for all such Vagrant and idle persons as cannot give a good account of their habitation and calling, and them to apprehend upon suspicion of the said offence, and under your custody to bring them before the next Justice of the Peace, where they shall be apprehended to be by him examined, and further dealt with according to Law, and this shall be your sufficient Warrant in that behalf, whereof I require you in no case to fail, as you will answer the contrary. Given under my hand and seal at H. the day of *Anno Dom. 1650.* And this to be directed,

*To all Mayors, Bailiffs, Constables, Headboroughs,
and all other Officers to whom these shall appertain,
within the County of Kent.*

If the party thus robbed, do with all speed make Hue and Cry, and at the next Town to the place where the robbery was done make the same known, and do before the next Iustice of the peace he can find, make Oath thereof, and fresh suit be not made in pursuance of the Offenders, the party robbed shall recover his damages of any one or more persons in the Hundred where the pursuit was neglected, against whom he shall bring his action: and every inhabitant in the Hundred shall contribute to the payment of the costs and damages which shall be recovered of him against whom the action is brought, according to the rates at which they shall be assessed by the Constables and Headboroughs of the severall Hamlets within the Hundred where the robbery was done.

But it behoveth him who will expect benefit by such action, to pursue the words of the Statute to the letter, otherwise he shall take no advantage by the said Statute. The person robbed must therefore, with as much convenient speed as may be, give notice and intelligence of the Felony or Robbery so committed, unto some of the Inhabitants of some Town, Village, or hamlet neer unto the place where such robbery is committed, and must within twenty dayes next before such action be brought to be examined upon his corporall Oath to be taken before some one Iustice of the peace of the County where the robbery was committed, inhabiting within the said Hundred where the robbery was committed, or neer unto the same, whether he do know the parties that committed the said Robbery, or any of them, and if upon such examination it be confessed that he doth know the parties that committed the

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said

said robbery, or any of them, then he so confessing, shall before the said action be brought, enter into sufficient bond by recognizance before by the said Justice before whom the said examination is had, effectually to prosecute the same person or persons so known to have committed the said robbery by indictment, or otherwise, according to the due course of the Laws of this Realm, as by the Statute of 27. *Elix.* more at large appeareth.

I have insisted the longer upon this Point, for the better information of such as are ignorant in the Law, having observed, that for the want of the prosecution of the severall circumstances of this Statute, many have failed in their Actions which they had just cause to bring; and sometimes after a verdict upon such action, judgement hath been arrested, and the action lost.

But if the party robbed do know the Felons, and their names, then the warrant must be thus;

THese are to will and require you, and in the name of the Keepers of the Liberties of *England, &c.* straitly to charge and command you immediately upon receipt hereof, to make diligent search and inquiry within your severall Liberties and Precincts for A. B. C. D. and E. F. and them to apprehend for suspicion of Felony, and under your Custody, to bring them before the next Justice of the Peace of the County where they or any of them shall be apprehended, to be by him examined and further dealt with according to Law, and this shall be your Warrant in that behalf, whereof I require you in any wise not to fail. Given under my hand and seal, &c.

Which warrant is to be directed as the last before mentioned.

And

And in pursuit of such Felons, the Constables, or other Officers to whom the Justice of Peace his Warrant is directed, may (when need shall so require) require the aid of so many of his neighbours of all sorts of able men above fifteen years of age, as they shall think meet. And if any such person so required by any of those Officers shall refuse or neglect to aid them, he may be fined and imprisoned for it at the Quarter Sessions.

And if upon such search and pursuit the Officers who are commanded by the Justice of the Peace to make the same, do finde, or upon good presumption do suspect that the offenders are got into a house, they may (first signifying the cause of their coming, and requiring the doors to be opened unto them) break open the house where the offenders are. And if a Constable do arrest a man upon a warrant from a Justice of Peace, and after the arrest the party (of his own wrong) getteth away and flyeth into another County, in this case the Officer may pursue him, and take him there, and bring him back to the same Justice from whom the warrant came; but if coming to arrest a man he fly before he be arrested into another County, and he pursue him, and take him there, in this case he must bring him before a Justice of the Peace of the same County where the Offender is taken, where the Officer can do nothing as an Officer, but as a private man only.

A Warrant to attach one to appear at the Assises.

Salop.

These are to will and require you, and in the name of the Keepers of the Liberty of England, &c. straitly to charge and command you, to apprehend
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the body of A. B. late of C. in the County of *Salop*, Labourer, and him presently to conduct and bring before me, or some other of the Iustices of the peace of the said County, to enter into a recognizance with sufficient sureties for his appearance at the next Assises, or generall Goal delivery to be holden for the said County, to answer unto such matters as on the behalf of the said Keepers, shall be then and there objected against him, And hereof fail you not, &c. Given, &c.

To the Constable of D. or to his Deputy, or Deputies, or any of them.

A Warrant for men which have committed a Riot.

Kent.

FOR as much as I am informed, That there is a Riot done and committed in L. in the said County, by A. B. C. D. E. F. and others yet unknown, in casting down a Ditch in the night, tending to the breach of the peace of the Keepers of the Liberry of *England*, &c. These are therefore in the name of the said Keepers, to will and require you to attach the bodies of the said A. B. C. D. and E. F. and them to bring before me at my house at N. Then and there to answer for the said offence, and all such other matters as shall be objected against them: And further, to be ordered as to Law and Iustice shall appertain, And hereof fail not, &c. Given, &c.

To the Constables of L. &c.

A Warr.

A Warrant for the Peace.

Essex.

For as much as A. B. of C. in the County aforesaid Yeoman, hath come before me, and hath taken his corporall Oath, That he standeth in fear of his life, or some other bodily harm to be done unto him by E. F. of G. in the said County Husbandman: These are therefore in the name of the Keepers, &c. strictly to charge you, that presently upon the receipt hereof, you cause the said E. F. to come before me, or some other of the Justices of the peace of the said County, to finde and give in sufficient Sureties, as well for his appearance at the next Quarter Sessions of the Peace to be holden for the said County, as also for the keeping of the peace towards the said Keepers, and all the people of this Common-wealth, and chiefly towards the said A. B. And if the said E. F. shall refuse this to do and perform, that then immediatly you him safely convey to the Goal at C. there to remain untill he become bound, as aforesaid; so as his body may be at the next generall quarter Sessions of the Peace to be holden for the said County, together with this Precept; and hereof fail you not, &c. Given, &c.

To the Constables of the Town of D.

Another Warrant for the Peace.

Forasmuch as A. B. wife of R. B. of your Town, Labourer, hath required the Surety of the Peace against C. D. of your Town, Tailor, and withall hath taken her corporall Oath before me, that she requireth

quireth the same, not for any hatred, malice, or evill will, but simply, that she is afraid of her life, or hurting, or maiming of her body: These are therefore to will and require you, and in the name of the Keepers of the Liberties of *England, &c.* to charge and command you, that immediately upon the sight hereof, you, or one of you, require the said C. D. to come before me, or some other of the Justices of the Peace within the said County, to finde sufficient Sureties, as well for his appearance at the next generall quarter Sessions, &c. as also, &c. As in the former Warrant, &c.

A Warrant for the good behaviour.

A. B. and **C. D.** Esquires, two of the Justices of the Peace in the County of Leicester, to the Sheriff of the said County, to the chief Constables of the Hundred of E. and to the under Constables of F. and to every of them, Greetings:

FOrasmuch as G. H. of F. aforesaid, Husbandman, hath been bound to the Keepers of the Liberty of *England* in recognizance, for the good a. bearing, and forfeited the same, and standeth at this time indicted thereof, and continueth a disordered person, and not of good fame, nor honest conversation among his neighbours, but is an evill doer, a barretor, a riotous and perturber of the Peace of the said Keepers of the Liberty of *England*; as we are given to understand by sundry credible persons by evident matters in Articles objected against him; Therefore on the behalf of the said Keepers, we command you and every of you, to cause the said G. H. to come before us, or some other of our fellow Justices, to finde sufficient Sureties and maine-
prize,

prize, as well for his good abearing towards the said Keepers, as all other the people of this Commonwealth, untill the next quarter Sessions of the peace to be holden for the said County; as also for his personall appearance, then and there. And if he shall refuse so to do, that then immediately you safely convey him, or cause to be safely conveyed to the common Goal of the said County, there to be and remaine, untill he shall willingly do the same; so that he may be before the Justices of the Peace of the said County, at the next generall Sessions of the Peace, to be holden, as abovesaid, then and there to answer for his contempt in this behalf. And see that you certifie your doings in the premisses to the said Iustices at the said Sessions, and bring thither this Precept. Given under our hands and seals, &c.

To the Constable of A. his Deputy or Deputies, or any of them.

Another Warrant for the good behaviour.

FOrasmuch as we have been credibly informed, that A. B. of your Town, is a man of evill behaviour, one that daily moveth Discord, Strife, and Dissention among his Neighbours, and a common Perturber of the Peace of the Keepers of the Liberry of England, &c. These are therefore in the name of the said Keepers, immediately upon the sight hereof, to cause the said A. B. to come before us, &c. as before.

A Warrant for the good behaviour, directed to the Sheriff.

THe Keepers of the Liberty of England, &c. To the Sheriff of the County of Lanc. greeting.
We command you that you omit not for any liberty, but that you enter thereinto, and attach the body of A. B late of C. in your County, Yeoman, so that you may have his body before one or more of our Justices, for the keeping of the Peace within your County assigned, so soon as he can be found, then before them, or one of them to finde sufficient surety for his good behaviour towards us, and all the people of this Common wealth, and especially towards E. F. and to appear before our said Justices for the keeping of our peace assigned at M. in your County at the generall Sessions of the peace to be holden for your County, and from thence not to depart without the license of the said Justices, under a certain pain upon him by our said Justices, or any of them to be imposed; and this to do, see yee do not in any wise omit, upon peril that shall fall thereon, and that you have here this Writ. Witness T. B. Baronet, at D. the day of Anno D. 1652.

A Warrant to levie money forfeited by Ale-house-keepers.

Essex.

I. G. Esquire, one of the Justices of the Peace in the said County of Essex, to the Constables and Churchwardens of the Parish of W. and to every of them, Greeting.

FOrasmuch as it hath been proved before me, according to the Statute in that behalfe provided, That all and every the persons hereunto named, being

being Inhabitants within your Parish of W. upon the tenth day of this instant moneth of *Septemb.* have been, and continued drinking and tipling in the house of G. W. of your said Town, Inn-keeper (or Alehouse-keeper) contrary to the form of the same Statute; These are therefore in the name of the said Keepers, &c. to charge and command you, and every of you, forthwith to levy by distress, and sale of the goods of every of the said persons here under named, the sum of three shillings four pence apiece, if they shall refuse, or neglect to pay the same, (which severall forfeitures shall be bestowed and employed by you to the use of the poor of your Parish) and that you render to every of the said offenders, the overplus that shall remain upon your sale of the said goods; if the said offenders, or any of them shall refuse, or neglect to pay their said severall forfeitures, and that you can finde no sufficient distress whereon to levie the same, that then the Constables, or one of you, shall commit every such offender or offenders (neglecting or refusing to pay the said sum or forfeiture, and not having sufficient whereon to be distrained for the same) to the Stocks there to remain by the space of four hours, and this shall be your Warrant herein, dated, &c.

*To the high Constables of the Hundred of R.
and to either of them.*

These are in the name of the Keepers of the Liberty of *England*, &c. to command you to warn all the Inholders, Taverners, Cooks, Alehouse-keepers, Butchers, and other Victuallers whatsoever within your Hundred, personally to appear before us at *L.* upon Tuesday, being the twentieth day of this

This instant Febr. at the Signe of the Swan there; and to bring with them Sureties that shall enter in to bond with them, to the use of the said Keepers, for the due observation of the Orders lately published for the restraint of killing, dressing, and eating of flesh in Lent, or upon Fish-days, according to a Proclamation in that behalfe made; and that you, or one of you be then and there with us to deliver us a note in Writing of the names and Surnames, and dwelling places of every of them, and of all other that Victuall without License within your Hundred; as you will answer the contrary at your peril. Dated at W. the first day of Febr. Anno Dom. 1652.

By this time we see what use is of a Constable by whom all the warrants before mentioned, and which shall hereafter follow, are to be executed: but before we trouble him with the execution of any more. I think it convenient to set down his duty, which shall best appear by the Oath which he takes when he is put into that troublesome and necessary Office; which done, we shall and some for their forms of warrants, and make such observation as shall be emergent thereupon; the tenor of which Oath is as followeth.

YOU shall well and truly serve the Keepers of the Liberty of England by Authority of Parliament, in the Office of Constable within your Township, Liberty and Precinct; you shall see the peace to be well and truly kept; you shall arrest all persons committing any assaults, affraies, riots, or unlawfull assemblies, to the breach of the peace; you shall from time to time present the offences done and committed, contrary to the Statute made against Drunkenness, you shall see that the Statute

Winton for punishment of sturdy Beggars, Vagabonds, Rogues, and other idle persons be put in execution, and the offenders punished, you shall do your best indeavour upon complaint made to apprehend all Felons, Barretors; riotous persons, and other offenders making any affraies; and if any of them shall resist with force, you shall make outcry, and them pursue till they be taken: you shall have regard, that no unlawfull games be used: you shall duly execute all Precepts, and Process comming unto you from any of the Justices of the peace within this County; you shall make true presentments of all bloodshed, outcries, affrays, rescues, and other misdemeanours committed within your Office; and you shall duly and truly, to your power and best knowledge, do all other things which appertain to the Office of a Constable to be done for this year to come, or for so long as you shall continue in the said Office, So help you God.

And because in this Oath of the Constable, mention is made of the Statute of Wynton, for watch, Hue and Cry, which he is sworn to see executed, though few do understand the tenor of that Statute, I have thought it worth the labour, for the better information of such Officer, to insert the same in this Treatise of the peace, which is as followeth.

IF any be suspected of the death of any man, being in danger of his life, he shall be taken and imprisoned, and Hue and Cry shall be levied for all murders, burglaries; and for men slain, or in danger to be slain, as otherwise is used in England: And all shall follow

low the Hue and steps as neere as can be, and he that doth not, and is convicted thereupon, shall be attached before the Iustices of the Goal delivery: immediatly after any Felonies and Robberies be committed, fresh suit shall be made from town to town, and from Countrey to Countrey; and inquest shall be taken (if need be) by him that is the chief Lord of the Town, and after in the Hundreds, Franchises, and in the County, and sometimes in two or three, or four Counties, in case where felonies be committed in the marches of Shires, so that the offenders may be attainted and suffer punishment. And if the country, wil not answer for the bodies of such offenders, the people dwelling in every such Countrey shall answer for the Robberies done, and the damages: So that the whole Hundred where the robbery shall be done with the Franchises which be within the same Hundreds shall answer for the Robberies done. And if the robbery be done in the division of two Hundreds, then both the Hundreds together, with the Franchises within the Precincts of them shall answer; and the countrey shall have no longer time after the Felony and Robbery committed, but forty dayes, within the which they must agree for the Robbery and offence, or else they shall be answerable for the bodies of the offenders.

And

And now that the Constable being informed what is meant by the Statute of *Winton*, knows what he is to do in the execution thereof; we will finde him some more work in the execution of such other Warrants and Precepts as shall come to his hands from the Justices of Peace, or the Upper Bench; but before I do that, I shall set down the Oath of an High Constable, of which there are commonly two in every Hundred, as followeth.

YOU and either of you shall well and truly serve the Keepers of the Liberty of England by authority of Parliament, in the Office of High Constables within the Hundred of L. within this County, wherein you and either of you shall do and performe all things belonging to your Office according to your best skill and knowledge, and according to such Articles and other directions as shall be given you by this Court.

So help you God.

This Officer of high Constable hath power to do divers things which the petty Constable hath not, which because they do not meerly concern the peace (which as I said before is the subject matter of this present Work) I shall not mention; I shall only observe, that by the late King *Charles* his speciall direction, *Anno Dom. 1630.* the high Constables were charged to look to the petty Constables that they be diligent in their Offices; and that they should present to the Justices of the Peace the defaults of the petty Constables, in their not punishing of Rogues, or not presenting those that are Relievers of them.

And

And that you may see how much the Law favours and protects a Constable executing his Office duly. I have set down two Judgements upon actions brought against them, for the incouragement of such as are careful to performe their Duty.

IN Trespass upon Assault, Battery, and Imprisonment made (such a day and year) at B. in the County of Cornwall, brought by C. against D. The defendant saith, that he was Constable of the same Parish, and that the plaintiff, the said day, year and place brought an infant, not above the age of ten dayes, in his armes, and left him upon the ground, to the great disturbance of the people there being, and that he commanded the Plaintiff to take up the said Infant and carry it away with him, which the Plaintiff refused to do, for which cause he quietly laid his hands upon the Plaintiff, and committed him to the Stocks in the same Town, where he continued for such a time, untill he agreed to take up the Infant againe, which is the same Assault, Battery, and Imprisonment, of which the Plaintiff complains.——Upon which the Plaintiff demurred.

Fenner Justice was of opinion, that what the Constable had done was lawfull, &c. Popham chief Justice said, That a Constable is one of the most ancient Officers of the Realme, for the conservation of the Peace, and if he see any breaking the Peace, he may take and imprison him till he finde Surety by obligation to keepe the Peace. And if a man lyes an Infant which cannot helpe it selfe on a Dung-hill, or openly in the Field, so that the Beasts or Fowles may destroy it, the Constable seeing it may
commit

commit the party so doing to prison. For (said he) the greater breach of the peace can there be, then to put such an infant in danger of its life; and there is no diversity between this case, and the case in Question, for no body was bound by Law to take up the Infant but he which brought it thither, and so the Infant might perish, the default thereof was in the Plaintiff, and therefore the action would not lie. The Lord Pophams Reports. fol. 13.

32. Eliz. in the Kings Bench.

IN the case between F. and his wife, who brought their action against S. a Constable for false imprisonment of the wife. And it was (*inter alia*) resolved by Wray chiefe Justice. That upon the general Warrant (*scil.*) *Coram aliquo iudiciario*, it is more reason that at the election of the Constable who is an Officer, and Minister of Justice, to bring the party attached before what Justice he will, who in presumption of the Law is a person indifferent, and sworn to do his Office duly, then to leave it to the election of the delinquent, who peradventure will carry the Constable (the greater part whereof are poor men) to the furthest part of the County, whereby such Constables will be the more negligent and remiss about such Warrants, for fear of travell, and loss of their time. Which judgement is against the Opinion of *Fineux*, 21. H. 7. whereof the Reporter made a Quere. But this agreeth with the Opinion of the Lord Brook in abridging the Case of 21. H. 7. *titul.* False imprisonment. — And note, That in this case Sir Ed. Cooke saith, that the Law was adjudged in the Point, as to his knowledge it never was before.

Secondly, It was resolved, that after the Officer

in

in the case above, hath brought the party before a Justice, and before him he refuse to finde Surety: the Officer, without any new Warrant or Commandement may carry the party to Prison, and then by the words of the Warrant, *Et si hoc facere recusaverint*; and *Wray* said, That a Justice of Peace may in such case make a Warrant to bring him before himself and it shall be good and sufficient in Law. For its likely that he that makes the Warrant hath best knowledge of the matter, and therefore is more apt to do Justice in the case. *Sir Ed. Co. 3. Report. fol. 59.*

And that you may know in what power Constables were in former times, you shall understand that before the Statute of 3. H. 7. Every Constable at the Common Law, might baile one suspected of Felony by obligation, or commit a man to prison that made an affray till he found Sureties, *Lamb. 15.*

And being hurt in parting an affray, he may have his action against the Affrayer, but the Affrayer can have none against him. *Lamb 132.*

And if two be fighting in an house, the doors being shut, he may breake open the doors to see the Peace kept, and may imprison an Affrayer in the Stocks (not in his house) till he may provide to carry him to the Goal, or to a Justice of Peace, *Lamb. ibidem.*

If a man be arrested for suspicion of Felony by a Constable, and after Conuance is come to him that made the arrest, that there is no Felony done, The Opinion of *Keble*, *Conisby* and *Frowick* Serjeants was, that he which had arrested him, might let the prisoner go at large. But by their Opinions, if a man were slain indeed, and one is arrested for the same Felony, or for suspicion thereof, although that afterwards

afterwards he have knowledge that he whom he arrested was not guilty, or that he made the arrest upon malice, yet may not let him go at large, but it behoves that he be delivered by course of Law, and not by their discretion, and in this case this deliverance by him is Felony, &c. *Kelw. Rep fol. 34.*

And now having done with the high Constable, for so much as concernes the matter of the Peace, I shall return again to the Warrants I formerly promised.

A Warrant to take men Indicted, that have not payed their Fines assessed upon them.

Orasmuch as the severall persons here under named, stand indicted and presented for their severall Offences hereafter expressed, and have not made Fine to the Keepers of the Liberty of England, &c. These are therefore in the name of the said Keepers, to charge & command you that you apprehend & take them, and every of them, and them and every of them safely to keep, so that you have their bodies before the Justices of the Peace, at the next generall Sessions of the Peace to be holden for the said County, after the Feast of *Easter* next comming, then and there to make their Fine for the severall offences, and further to do as to the said Justices shall be thought fit and convenient: And of your doing therein, that you certifie us at the said Sessions, given in open Sessions under our Hands and Seals at M. the tenth day of *January*, Anno Dom. 1652.

P

A War

A Warrant for the Peace granted by a Judge of Assise.

THe Keepers of the Liberty of England, &c. To the Sher. ff of Lancaster, greeting. We command you, that you omit not for any Liberty in your County, but that you attach A. B. late of C. in the said County Yeoman, so that you may have his body before our Iustices at Lancaster, on Monday the tenth of April next comming, then and thereto give sufficient security to keep the peace towards us, and all the people of this Nation, and chiefly towards R. B. under a certain pain upon him by our Iustices to be imposed; And when you shall by vertue of this Writ attach him, then by sufficient Sureties such as will be bound for him, you shall under a reasonable pain to be imposed, you shall bind him, as well for his appearance at the said day, as also for the keeping of the Peace towards us, & all other people of this Nation, and especially towards the said R. B. untill the said day; and this in no wayes to omit, upon pain and peril that shall fall thereon, and have you here this Writ. Witness E. B. at Lancaster, the day of Anno Dom. 1652.

A Warrant to attach a Fellow.

FOrasmuch as complaint hath been made to me by A. B. of your Town, that he hath of late certain goods feloniously taken from him; and that he hath in suspicion one C. D. of your Town, Labourer. These are therefore to will and require you, and every of you, presently upon the receipt hereof, to attach the body of the said C. D. and thereupon to bring

bring him before me, to answer unto the premises. And hereof fail you not at your peril. Given under my hand and seal, &c.

To the Constables of M.

A Warrant for one who hath dangerously hurt another.

Forasmuch as I am credibly informed, that A. B. of your Town Butcher, hath now lately dangerously hurt one C. D. of your Town, Yeoman, by a blow which he hath given the said C. D. on his head, and another on his back, so that the said C. D. is in danger of death thereby. These are therefore in the name of the Keepers, &c. to charge and command you, that immediately upon sight hereof you or one of you do bring the said A. B. before me (or some other of the Iustices of the Peace of the said County) to finde sufficient surety as well for his appearance before the Iustices of the said Keepers at the next generall Goal-delivery to be holden for this County, then and there to answer unto the Premises; as also that he the said A. B. shall in the mean time keep the Peace towards the said Keepers, and all the people of this Common wealth, and especially towards the said C. D. And hereof fail you not at your perils. Given under my hand and seal, &c. *To the Constables of M. and every of them.*

A Warrant to attach the reputed Father of a Bastard Child.

Whereas complaint hath been made to me by K. L. of your Town, single woman, that she

is begotten with Child by one R. S. also of your Town, Tylor. These are therefore in the name of the Keepers of the liberty of Eng. to will and require, & also to charge and command you presently upon the receipt hercof, that you attach the body of the said R. S. and thereupon to bring him before me (or some other Iustices of the Peace of this County) to find sufficient surety as well for his appearance at the next generall Sessions of the Peace to be holden for this County, as also for his good behaviour towards the said Keepers of the Liberty of England, &c. and all the people of this Common-wealth, in the mean time. And hereof fail you not, &c.

A Warrant for a Fugitive servant.

Kent.

W I. Esquire one of the Iustices of the Peace in the County aforesaid. To the Bayliffe of the hundred of W. and to R. H. Constable of M. in the County aforesaid, Greeting. Forasmuch as A. B. being retained in the Service of C. D. him to serve) according to a forme of the Statute for Labourers Enacted) hath from the Service of his said Master without any reasonable cause, or Licence of the said C. D. departed (as it is informed) Therefore on the behalf of the said Keepers; I require you and every of you, the said A. B. unto the said C. D. his Master him to serve, you cause to be delivered. And if he shall refuse so to do. That then you cause the said A. B. unto the Goal at M. to be brought. So that you may have him before me and my fellow Iustices of the Peace of the said County, at the next generall Sessions of the Peace there to be holden, then and there to do and receive such things as is agreeable to the Law and Justice. Given, &c.

A Warrant

A Warrant to search for Sheep stealers.

Whereas I am informed, That A. B. of C. in this County, Yeoman, hath had divers Sheep taken out of his Flock at C. aforesaid, some whereof at divers and sundry times have been killed, dead, and their bodies carried away, leaving their skins behind. These are therefore in the name of the Keepers of the Liberty of England, &c. require you and every of you, to whom it shall appertain upon sight of this my Warrant, to make diligent search in all suspected places within the Hundred of N. and elsewhere as you shall be advised and directed by this Bearer: And upon finding and apprehension of the offenders, or any of them, to bring them before me at my house at W. to be proceeded with according to Law. And hereof faile you not, &c.

A Warrant to take a Felon granted in open Sessions.

The Keepers of the Liberty of England, &c. To the Sheriff of the County of Essex greeting. We command you that you admit not for any liberty, But that you attach the body of A. B. and C. D. late of B. Labourers. So that you may have them before some of our Iustices for the conservation of the Peace, &c. in your County assigned, so soon as they can be taken, to finde good and sufficient surety for the good abearing towards us, and all the people of this Nation according to the forme of the Statute in that case made and provided. And that they do personally appear before our Iustices of the Peace in your County, at the next generall Sessions of the Peace to be holden for your County.

*A Warrant for suppressing an Alehouse.**Surrey.*

A B. and C. D. Iustices of the Peace of the said County of *Surrey*, to the Constables of E. greeting, whereas we are informed. That I. K. of your Town Victualler, is himself a man of evill behaviour, and doth also suffer evill and disordered rule in his house, contrary to the Laws and Statutes of this Common-wealth; These are therefore in the name of the Keepers of the Liberty of *England*, to will and command you forthwith to repair to the house of the said I. K. and to charge him to sur-cease from common selling Ale or Beer at his perill; and withall to cause his Sign (if he have any) to be pulled down: Hereof fail you not, as you and either of you will answer the contrary at your perill. Given under our hands and seals, &c.

*A Warrant to take a common Alehouse-keeper who hath no License.**Hertff.*

W Hereas A. B. of C. in the County aforesaid, hath of his own authority taken upon him to keep a common Ale-house or tippling-house in C. aforesaid, contrary to the Statute in that case made and provided, and still continueth so to do, contemning sundry warnings given him to leave off offending the Law therein. We therefore H. I. and K. L. Esquires, two of the Iustices of the peace within the said County, do hereby in the name of the Keepers of the Liberty of *England*, &c. charge and command you the Constables of C. aforesaid, the

the said A. B. to apprehend, take, and convey unto the common Goal of this County: The Keeper of which Goal we the said Justices do hereby in the name of the said Keepers likewise charge and command the said A. B. (at your the said Constables hand) to receive, and in Custody safely to detain by the space of three dayes expired, and him not to enlarge before he hath become bound with two good Sureties before us or some other Justice of the Peace of this County, that he shall not keep any common Ale-house or Tippling house, or use common selling of Ale or Beer, according to the Proviso and appointment of the Statute in that Case made and provided.

A Warrant for choosing a new Constable.

WHereas A. B. of your Town being now Constable, is by reason of his Age and impotency very unable and unsufficient to discharge and execute the said place: These are therefore in the name of the Keepers of the Liberty of England, to will and require you and every of you whose names are here under written, to be and personally appear before me at my house at C. to morrow by eight of the Clock in the morning, that I may make choise of one of you to be sworn, to undertake the said Office, and to execute the same, and hereof stile you not, &c.

A Warrant for a Privie search to the High Constables.

WHereas by an Act of Parliament in the seventh year of late King of England, intituled

enacted an Act for the due execution of divers Laws and Statutes made against Rogues and Vagabonds, and all other lewd and idle persons; It is provided, that the Justices of the Peace of every County within their severall Divisions shall meet together for the execution of the said Statute, and that four or five dayes before their meeting they shall cause the Constables of every Hundred to make a generall privie search for the apprehending of such lewd people, These are therefore in the name of the Keepers of the Liberty of England, to command you that taking for your assistance the Constables of every Town and some other persons of sufficient, you make a private search through your Hundred upon Monday at night next, and apprehend such Rogues and Vagabonds wandering and idle persons as shall be then found, and them cause to be forth comming and brought before us and other Justices of the Peace at S. upon Thursday morning by eight of the Clock, to receive such order and punishment as the Law doth appoint; and that your selves do there attend with Certificate of your proceedings, not doubting but you will be carefull to use all due care and secrecy in this Service; We bid you farewell; Given under our hands and seals, &c.

*A Warrant to the High Constable to give
Warning to the Overseers of every Parish to
be at the sitting of the Justices.*

FOR the better execution of the Statute provided for the reliefe of the poor this year following. These are in the name of the Keepers, &c. to will and require you to give knowledge to the Church-Wardens and Overseers for the poor for
this

this year last past, that two or one of them severally for every Parish within your halfe Hundred, to make their personall appearance before us, upon Wednesday the third day of April next, by eight a Clock in the forenoon, at A. at the house of J. D. then and there to make good and yeeld up their Accounts fair written, and subscribed with all their hands, according to former directions, after this manner.

First, the names of them that contribute, and what every one giveth,

Secondly, who receiveth reliefe, and what every one is allowed, and what remaineth.

Thirdly, such Arrearages as be due from the old Overseers, and the Warrant from their year. And also that they give us in Writing the Names and Surnames of three or four of the most substantiall Inhabitants in their severall Parishes, that we may choose some of them to be Overseers for the Poor of each severall Parish for the next year, according to the true intent of the said Law.

Furthermore, you are to charge all Inn-keepers, Alehouse-keepers, and Victuallers within your Hundred, to appear then and there likewise before us, and bring their Licenses with them to renew the same. And if any within your said Hundred shall Victuall without License, you shall cause them also at the time and place aforesaid to be brought before us to be proceeded with, according to the Statute in that case made and provided. And lastly, that one of you be with us in the furtherance of the said service; whereof we require you not to faile at your perills, &c.

A War-

A Warrant against one for drinking a Health to the King of Scots.

THese are to will and require you, and in the name of the Keepers of the Liberty of *England*, and straitly to charge and command you presently upon the sight hereof to attach the body of *W. B. of Dextford* in this County Butcher, who is charged to speak these words, *Here is an Health to King Charles*; and him to bring before me, or some other of the Iustices of the Peace of this County, to enter into Recognizance with sufficient Sureties to be forth coming, to answer the Parliament, Councell of State, high Court of Iustice, or at the next generall Goal-delivery holden for this County; then & there to answer unto such matters as shall be objected against him on the behalf of the said Keepers; And hereof fail you not, as you will answer the contrary at your perill. Given under my hand and seal the day, &c.

A Warrant for such as refuse to pay their Assesments.

FOrasmuch as we are informed, that the persons here under named do refuse to contribute or pay the sums of money here under mentioned (upon their heads) being assessed and rated upon them severally for and towards the necessary reliefe of the Poor of your Parish, according to the forme of the Statute in that behalfe made and provided. These are therefore in the name of the Keepers of the Liberty of *England*, &c. to charge and command you, and every of you forthwith to levie all and every the said several sums unpaid, and all the Arrerages thereof

thereof, of all and every the persons so refusing, by distress and sale of the Offenders goods, you rendering to the parties the over-plus that shall remain upon the sale of the said Goods: And this shall be your sufficient Warrant, dated, &c.

A Varrant for removing of a petty Constable, and swearing of another.

THe Keepers of the Liberty of England, &c. To the Sheriff of Kent, and also to the high Constable of the Hundred of S. greeting. Forasmuch as A. B. and C. D. petty Constables of the Town of F. in the said County (for certain causes us moving) we have thought good to remove and discharge from the said Office: We do therefore require and command you and every of you joyntly and severally, that you cause to swear in the said Office, D. E. and F. G. well and faithfully to execute the said Office, and that the said A. B. and C. D. do not any further exercise or execute the said Office untill they have further commandment from us: And what you shall therein do, you certify our Iustices for the conservation of the Peace in that County, assigned at the next general Sessions of the Peace for that County to be holden, Witness, &c.

A Varrant for the good Behaviour granted in the Sessions.

WE the Iustices for the conservation of the Peace within the County of Stafford, whose Names are subscribed. To the Sheriff of the said County, and to all Mayors, Bayliffs, Constables, and all other Officers of the Keepers of the Liberty of England; and especially to the Constable of G. greeting.

greeting. Forasmuch as at the general Sessions of the Peace holden at S. within this County, the day of last past, E. K. late of L. in the said County, Husbandman, standeth indicted for shooting at one I. C. with a stone Bow, and for divers other misdemeanours. These are therefore in the name of the said Keepers, straitly to command & charge you presently upon receipt hereof, that you apprehend and take the body of the said E. K. and him bring before us, or some other of the Justices of the Peace of this County, to finde sufficient surety and main-prise for his personall appearance at the next general Sessions of the Peace to be holden for this County, and in the mean time to be of good behaviour towards the said Keepers, and all the people of this Common-wealth, and especially towards the said I. C. and that he do not depart without License of the said Justices; and if he refuse so to do, then to convey him, or cause him to be conveyed to the common Goal at S. there to remain without baile or main-prise untill he willingly do the same. Given in open Session, the day, &c.

A Warrant from a Justice of Peace to fetch a witness to give Evidence.

FOrasmuch as you are thought to be a fit and necessary witness to be examined on the part and behalfe of the Keepers of the Liberty of England. These are therefore in the name of the said Keepers, to command you that you be and personally appear before the Justices of the Peace, at the next Sessions of the Peace to be holden for this County, then and there to testifie and depose your knowledge upon the behalf of the said Keepers, to and upon such matters as then and there you shall

shall be examined of: And hereof faile you not at
your uttermost perill; Given under my hand and
seale, &c.

Another Warrant for a fugitive Servant.

R. one of the Justices of the Peace, &c. To the
Constables of the Town of M. and to W. by the
Justice Itinerant in the said County, and to every of
them, greeting. On the behalf of the Keepers, &c. I require
and charge you, and every of you, that you or one of you
attach A. B. of M. aforesaid Weaver. So that you or
one of you may have him before me and my fellow Ju-
stices of the Peace, at the next generall Sessions of the
Peace for the said County to be holden, to answer as
well to the said Keepers as also to C. D. of M.
aforesaid, to shew cause why being retained in the
service of the said C. D. did from the said Service
depart before the end of the Term between them a-
greed, without any reasonable cause, and the Li-
cense of the said C. D. in contempt of the said Kee-
pers, &c. and the great damage of the said C. D. and
contrary to the form of the Statute in that case made
and provided; And that you or one of you have
there this Precept. Given under my hand and seale;
&c.

A Warrant for one refusing to serve.

Letit.

A. B. Barroner, one of the Justices of the
Peace of the said County, to R. L. Bayliffe of
the Hundred of B. greeting. On the behalf of
the Keepers of the Libertie of England, I do will and
require you to attach D. of F. in your Hundred
Labourer,

Labourer, so that you may have him before me and my fellow Iustices, at the next generall Sessions of the Peace for the said County to be holden, to answer as well to the said Keepers, as also to G. H. of B. aforesaid Yeoman; why he being often times required by the said G. H. to serve him a service fit and agreable to his Estate, hath nevertheless altogether refused to serve the said G. H. in contempt of the said Keepers and great damage of the said G. H. and contrary to the form of the Statute in that case made and provided: And that you have here this Precept; Given under my hand and seal, the day of Anno Dom. 1653.

But if a man doth suspect that the Peace or good Behaviour will be demanded against him, or doth heare that a Warrant to that purpose is awarded against him, he may go and give surety by Recognizance, for the Peace or good Behaviour, before any other Justice or Justices of the same County (as the case requires) and may thereupon have a Superseas, if for the Peace only, by one Justice; But if it be for the good Behaviour, the same is ordinarily granted in open Sessions, or out of the Sessions, by two or more Justices, and not otherwise; which Superseas for the Peace may be, and commonly is in this form.

I did before premise, that upon a Warrant for the peace and good Behaviour granted out of the Chancery, Upper Bench, or the Iustices of the Peace, a man might also have a Superseas from either of those Courts, or the Iustices of the Peace of the County, as the case requireth; Let us now see how the party that hath it must regularly use it, which is thus,

the Constable or any other Officer having a Warrant from either of the said Courts or Justices of the Peace, do go about to arrest the person against whom the Warrant is, and the party hath his Superedeas ready to shew to the Officer, and doth shew and deliver the same unto him when he is about to execute the same: In this case the Officer ought not to meddle with him; for the Superedeas is a discharge to the Officer from doing any thing which was required to be done by that Warrant; and if the Officer will nevertheless arrest the party, he may have his Action of false Imprisonment against him.

But before we speak thereof, we will shew what the Surety of the peace is, and how to be had.

Surety of the Peace, is the acknowledgement of Recognizance to the King, (taken by a competent Judge of Record) for the keeping of the peace. Dal. 161. and may be commanded by a Justice of the peace, either of his own discretion, when one maketh an assault upon the Justice himself, or when one maketh an affray in his presence, or in his presence or hearing, shall threaten to kill, beat, or hurt another, or to burn his house, and for many other causes which are at large particularly mentioned by Mr. Lambert and Dalton, to which I had rather refer the Reader, then transcribe all that they have written thereon.

And for this surety the party grieved may have a Writ de securitate pacis.

Where the Writ de Securitate pacis lieth.

THis Writ lieth where a man is in feare or doubt that another will beate him, or assault him, and it lieth properly where a man doth threaten to kill, beat, or assault him, then he may come into the Chancery, and pray to have such a Writ directed to the Sheriff in this forme.

The King or Protector to the Sheriff of Kent greeting; Whereas A. B. of C. hath grievously complained to us, that C. D. doth threaten to do some mischief to his body. We do therefore command you, that to the said A. B. from the said C. D. our firme peace, according to the Custome of England, you cause to have, so that you may be sure that to the said A. B. of his body by the said C. D. or by his procurement no damage or perill may come; Witness, &c.

- Or if one threaten to burn his house. Thus — We command you, &c. that &c. to the said A. B. of his houses aforesaid, by such burning he receive no damage, &c.

And he may have this Writ for the security of his body and burning of his houses all in one Writ, and he may have an *Alies* and *Pluries* attachment against the Sheriff if he do not his Office. *Fitz. Nat. Br. fol. 37.*

Or he may upon complaint made to the Justices of the Peace, and Oath taken (but not otherwise) have a Warrant to the Constable to bring such a one before him, who may binde him to the peace, but for the good abearing, it is to be done by two Justices.

And if a man have such a Warrant directed to the

the Sheriff, and the Sheriff take security that he shall keep the Peace, and afterwards he break the Peace upon him which demanded it, now he that demands the surety shall have an attachment against him, who found this surety; the tenor of which Writ you shall finde in *Fitz. Nat. Br. fol. 80. A.*

And this Writ is sometimes directed to the Sheriff, and sometimes to the Iustices of the Peace, the same whereof you may finde in the same Book. *fol. 80. D.*

And if a man threaten to beat his wife, she may have this Writ. *Ibidem. F.*

And so if a man require surety of the Peace of any man in the County, he shall finde sureties in the County before the Iustices of the Peace, and he which demands this surety may sue a Writ of *Certiorari* directed to the Iustices of the Peace, and the Recognizance taken for it, and that under the hands and seals of the Iustices, or one of them, to certifye the Recognizance, and surety taken.

And when a Writ of *Supplicavit* is directed only to the Sheriff, then the *Certiorari* shall be directed only to the Sheriff to make return of the surety found, if he have taken any.

If a Recognizance be taken for keeping the Peace against all people, especially against l. S. whither l. S. may release it before any Iustice some have doubted, and there are different Opinions thereabout. And some hold that a Iustice of the Peace, nor the party, at whose suit the Peace was granted can discharge a Recognizance by release out of the Sessions; and therefore it is held the safest way that the party appear at the Sessions, and there be released. Yet Mr. *Crompton* held, that if the Iustice of Peace do at the Sessions certifye the release, by this
Q the

the party who gave the surety is released; And this I am sure is the common practise.

A *Supersedeas* is a Writ granted out of a superior Court to stay the proceedings in an inferiour, so that a *Supersedeas* out of the Chancery will discharge surety for the Peace in the Kings Bench, and if it be awarded out of either of those Courts, it will stay the execution of any precept granted by a Justice of the Peace; for contempt whereof by proceeding he may be imprisoned and Fined. *Lam. fol. 99.*

If therefore a Justice of Peace receive a *Supersedeas* out of an higher Court, he must forbear to make any Warrant, or if he have made any, he must send out his *Supersedeas* to the Sheriff, or other Officers that he put it not in execution. *Lam. fol. 99.*

But whether a Justice of Peace can grant a *Supersedeas*, for the good abearing, hath been doubted, which Mr. Dalton affirmeth, *fol. 197.*

A *Certiorari* to remove a Record, is in it self a *Supersedeas* to the Justices, yet the party may have a *Supersedeas* to the Sheriffe that he arrest him not upon the Justices Record, *Lamb. § 15.* for which take the ensuing Presidents.

A Supersedeas out of the Upper-Bench, both for the Peace and good Behaviour.

THE Keepers of the Liberty of England, &c. To our Justices of the Peace in the County of Worcester, & to the Sheriff of the said County, greeting, Forasmuch as A. B. of C. in the County aforesaid, Gentleman, hath found unto us sufficient security, that he will personally appear before us in the Octaves of St. Hillary next comming, wheresoever

shall then be in *England*; And that he will in the meantime as well keep our Peace, as also will be of good Behaviour towards us and all the people of this Common-wealth, according to the form of the Statute in that case made and provided, as by the Record thereof before us fully appeareth. We do therefore command you and every of you, that from restraining or attaching the said A.B. or any surety of our Peace, or the good Behaviour towards us and all the people of this Common-wealth, or any of the people thereof, before you or any of you on this side the Term aforesaid to finde, you or any of you do supersede, or cause to be superseded: And if for this cause and none other you have taken him, and detained him in prison under your Custody, that then from the said prison (in which he is detained) if for these causes and none other he is detained) you do without delay, you or one of you deliver or cause to be delivered. Witness H.R. &c.

A Superedeas upon release of the Peace out of the Upper-bench.

THE Keepers of the Liberty of *England*, &c. To the Justices of the Peace of the County of *Middlesex*, and to the Sheriff of the said County greeting. Forasmuch as A. B. and E. his wife, have come into the Court of the said Keepers before the said Keepers, and have released the surety for the Peace which they desired against R.F. and so have relinquished them, as by the Record thereof before us appeareth. It is commanded that from attaching the said R. F. or molesting him for the said Cause; and if for the said cause you have taken him, and in the Prison of the said Keepers under

your Custody you have detained him; that then the said R. from the Prison in which he is so detained without delay you cause to be delivered: And hereof fail not, &c.

A perpetuall Superfedeas for the Peace upon baile.

THE Keepers of the Liberty of England, &c. To the Justices of the Peace, &c. Forasmuch as A. B. in your County, Yeoman, and C. his wife, came into our Court before us at *westminster*, on Tuesday next after one moneth after *Michaelmas*, and then and there did finde unto us sufficient security, as well for himself as the said C. his wife, that they from thenceforth would keep the Peace towards us, and all the people of this Commonwealth of England, as in our Court before us upon Record it fully appeareth. We do therefore command that from compelling and imprisoning the said A. and his wife, or either of them, any security for the Peace towards us, and all the people of this Commonwealth, before you or any of you again to finde, you do supersede or cause to be superseded, And it, &c. that then you or one of you do immediately cause them out of such Prison in which they or either of them are detained, to deliver, or cause to be delivered, &c.

A Superfedeas for the Peace out of the Chancery.

THE Keepers of the Liberty of England, &c. to the Conservators of the Peace, and to the Justices, to heare and determine divers Felonies &c. in the County of S. assigned, and to the Sheriff of the said County

County, and to every of them, greeting. Whereas A. B. hath found unto us sufficient surety, that he will from henceforth keep the peace towards us, and all the people of this Common-wealth, as by our VVrit of *Supersedeas* issuing out of our Court of Chancery, and among the Records of that tearm filed in our Court before us doth fully upon Record appear. VVe do therefore command you, and every of you, that from compelling and attaching the said A. B. to give further security for keeping the peace towards us and all the people of this Common-wealth, or any of them you do supersede, or cause to be wholly superseded; and if for this cause and none other you have taken the said A. B. and in our prison under your Custody have detained him, that then from the said Prison, if upon that occasion, and not elsewhere he be detained in the same, you or one of you, do deliver or cause to be delivered: Witness H. R. at *Westminster, &c.*

*To the Justices of the Peace, &c.
of S. and to the Sheriff of
the same County.*

Supersedeas to the Peace.

Kent.

W. I. one of the Iustices of the Peace in the County of *Kent*. To the Sheriff, Bayliffs, Constables, Bosholders, and all other Ministers of the Keepers of the Liberty of *England*, sendeth greeting. Forasmuch as A. B. of C. in the said County, hath personally appeared before me at W. &c. and hath found sufficient surety, that is to say, D. E. and F. G. Yeoman, either of which hath undertaken for the said A. B. under the pain of

forty shillings that he the said A. B. shall keep the peace towards the said Keepers & all other the people of the Common-wealth of England, & especially against H. I. of L. Yeoman, and that he shall personally appeare before the Justices of the Peace of the said County, at the next generall Sessions of the Peace to be holden at *Maydstone*. Therefore on the behalfe of the said Keepers, I require and Command you and every of you, that you do altogether forbear to arrest or imprison him, or otherwise by any means to molest him for the said occasion: And if you have (for the same occasion and none other) taken or imprisoned him, that then you do cause him to be delivered and set at liberty, without further delay. Given at *W. aforesaid*, under my hand and seale, &c.

And in like manner upon good surety taken by two Justices of the Peace, a *Supersedeas* may be granted for the good Behaviour, *Mutatis mutandis*.

But for a Writ of Supplicavit for the Peace, the Supersedeas must be in this forme.
viz.

Surr. ff.

A *Mbrose Browne*, Baronet, one of the Justices of the said County to the Sheriffe of the said County, and to all and singular Bayliffs, and other Ministers aswell within the Liberties of the said County as without, sendeth greeting. Whereas I have received a Writ of the Keepers of the Liberty of *England* by Authority of Parliament, in these words. *The Keepers, &c* (reciting all the Writ, word for word) Forasmuch as C. D. of
&c.

of, and E. F. of &c. and the said A. B. (being the person against whom the Writ of *Supplicavit* was granted) have personally appeared before me the said *Ambrose Browne*: And the said A. B. hath acknowledged to owe to the said Keepers forty pounds, and each of the said Manucaptors have acknowledged to owe to the said Keepers twenty pounds to be levied upon their Lands and Tenements, Goods and Chattells, to the use of the said Keepers, *viz.* That the said A. B. no damage or ill shall do or procure to be done to any of the people of this Common-weale in their Bodies, or burning of their houses, and especially to T. R. Therefore on the behalfe of the said Keepers, &c. I require you and every of you, to forbear and surcease to Arrest or attach the said A. B. to finde any Surety for the keeping of the Peace towards the said Keepers, &c. and people aforesaid, or any of the m.

And if for this Cause (and none other) you have taken, or given Commandement to be taken the said A. B. and in the Prison of the said Keepers under your Custody. That then from such Prison in which he is detained, you or one of you do without delay deliver or cause to be delivered. Witness me the said *Am. B.* the day, &c.

And in like manner upon good Sureties taken by two Justices of the Peace or more, may a Superfedeas be granted upon a Supplicavit for the good Behaviour.

*The forme of the Recognizance to be taken
upon granting a Supersedeas for the
Peace.*

Midd.

Memorandum, That the tenth of *August* in the
year of our Lord God, 1652. A. B. of C.
in the County aforesaid, came before me W. R.
Knight, one of the Justices of the said County for
conservation of the peace assigned; And the said
A. B. did assume for himself in the summe of
twenty pounds of lawfull money of *England*, and
D. E. of F. in the said County Yecoman, and H. D.
of F. aforesaid Husbandman, became bound for
the said A. B. either of them ten pound a peece
of like lawfull money of *England*, under the condi-
tion, that the said A. B. shall personally appeare
at the next generall Sessions of the Peace to be
holden for the said County. And that in the
meane time he shall keep the peace towards the
said Keepers, and all other people of this Com-
mon-wealth of *England*, and cheisly against L. M.
Which severall summes of money, every of them
hath acknowledged to owe unto the Keepers of the
Liberty of *England*, to be levied upon their and e-
very of their Lands and Tenements, Goods and
Chattells. If the said A. B. shall in any of the pre-
misses make default.

And if for the good Behaviour thus.

Memorandum—(as in the former) which seve-
rall summes of money, every of them hath acknow-
ledged,

And, &c. if the said A. B. shall not personally appeare at the next generall Sessions of the Peace for the County aforesaid to be holden, and in the mean time shall not be of good Behaviour towards the said Keepers, &c. and all other the people of the Common wealth, according to the forme of the Statute, &c.

Of which Recognizances, and others of like nature, if a Writ of Certiorari be prayed, it is thus made.

THe Keepers, &c. To the Justices of the Peace in the County of *wilts* greeting. Our will being for certaine causes certaine Recognizances which *A. B. and C.* in your County before you acknowledged (as it is said) before us, by you to be sent, We command you that the said Recognizances with all things thereunto belonging, as fully and intirely as they were by you lately taken, and in your Custody now remaine (as it is said) before us under the Seales of you, or one of you in the Offices of Holy Trinity next comming wheresoever we shall be in *England*, you or one of you do send together with this Writ, that we may further do therein as of right and according to the Custome of the Common-wealth of *England* shall be meet to be done. Witness *H. R.* at *Westminster*, the day of 1650.

A Certiorari of a Recognizance under a pain.

THe Keepers, &c. To the Justices of the Peace of the County of *wilts*, &c. greeting. Our will being for certain causes that all and singular Recognizances

recognizances for the surety of the Peace, and all other Recognizances whatsoever, which A. B. and C. have lately before you acknowledged (as it is said) before us to be sent. We command you and every of you as we have otherwise commanded you, all and singular the said Recognizances with all things touching the same, as fully and entirely as the same were before you taken, and do now remain in your custody (as it is said) before us on the morrow after *All-soules* wheresoever we shall be, &c. that we may further do therein, &c. as of right, &c. is to be done; or else to shew cause why our commandment otherwise to you directed, you did not or could not execute. Witness, &c.

We have brought such Felons and other Offenders as have been attached by the Warrants before specified, granted by the Justices, or otherwise, before the said Justices.

*It doth follow in the next place that we see what is done with such of them as cannot, or will not give security for their appearance at the general Sessions of the Peace of Goal-delivery (as the case requireth) which can be no other then sending them to the Goal till they shall be thence delivered by course of Law; which is by a Precept commonly called a *Mittimus*, so called, for the word *We* do send is alwayes used in that Precept; whereof I have thought good to set down some Presidents.*

MITTIMUS.

To the Keeper of the Goal of the said County.

Kent.

WEe send you herewithall the body of *A. Ashly, alias Cobler, and A. M.* brought before us this present day and charged with the Felonious using and practising of Witchcraft upon the bodies of a female Infant childe of *A. O.* and of a Daughter of *R. W.* which Witchcraft the said *A. Ashly* and *A. M.* have both confessed before us. We also send you herewithall the bodies of *M. W. Widow, and A. W. widow,* both likewise brought before us this present day, and charged with the Felony and Witchcraft aforesaid: VVe send you likewise herewithall the body of *T. G.* brought before us this present day, and charged with the Felonious consulting with, and rewarding of an evill Spirit; commanding you in the name of the Keepers of the Liberry of *England* by authority of Parliament, to receive the said *A. Ashly alias Cobler, A. M. M. W. A. VV. and T. G.* into the said Goale, and them there safely to keep, untill they shall be from thence delivered by due order of Law: Hereof faile you nor at your perill; Given under our hands and seales at *C.* the day and year, &c.

To

*To the Keepers of the Goal at M.**K. J.*

I Send you herewithall the body of E. L. of VV. Husbandman, who was this day brought before me and charged by T. H. of Clare Hall in Cambridge Gent. with Robbing him on Fridy last, on Shooters Hill, and taking from his Person ten shillings, the which he hath upon his examination confessed; You are therefore commanded to receive into your Goale, the body of the said E. L. and him safely to keep, untill he shall from thence be delivered by Law. Hereof faile you not, &c.

*To the Keeper of the Goale at C.**Essex.*

I Do herewith send you the Body of R. H. who stand charged upon suspicion of stealing six Oxen, being the Goods and Chattells of Sir I. E. Knight, willing and requiring you to receive him into your said Goale, and him safely to keep untill he shall be delivered by due course of Law, for which this shall be your Warrant, &c.

*To the Keeper of the Castle of York, being the common Goale for this County.**York.*

FOrasmuch as A. B. of C. in the said County, was proved before me to be a contentious Person, and a continuall disturber of his Neighbours, to the great greivance of the Inhabitants of the said Town

Towne of C. and in respect thereof hath been required to finde surety for his good Behaviour which he hath refused to do. These therefore are in the name of the Keepers of the Liberty, &c. straightly to charge and command you, that presently upon receipt hereof, you receive into your custody the Body of the said A. B. and him not to deliver until he shall finde sufficient surety for his good Behaviour; And appearance at the next generall Sessions to be holden for the said County. And hereof faile you not.

Salop.

H B. one of the Iustices of the Peace, &c. in the said County of *Salop* to the Keeper of the Goale of the said County, or to his Deputy there, greeting: These are in the name of the Keepers of the Liberty of *England*, &c. to charge and command you, that you receive into your said Goale the Body of A. B. late of C. in the said County Labourer, taken by D. E. and I. G. Constables of the Town of H. and by them brought before me for suspicion of Felony, &c. And that you safely keep the said A. B. in your said Goale, untill the next generall Goale Delivery for the said County, if he be not Bayleable, untill he shall thence be delivered by due order of Law. And hereof faile you not, &c.

A Mittimus for an Alehouse-keeper formerly suppressed.

Staff.

W D. and M. C. two of the Iustices of the Peace of the said County: To the Keeper

Keeper of the Goal at S. greeting. VWhereas I. N. of O. in the said County, upon complaint made unto us of the evill rule kept and suffered by him in his house, and other misdemeanours, by warrant under both our hands and seales was discharged of his Alehouse-keeping, and was by us commanded that he should thenceforth use no more the common selling Ale or Beer. And whereas we are certainly informed that the said I. N. notwithstanding our order and commandement given him to the contrary (as aforesaid) hath ever since obstinately and upon his own authority taken upon him to use commonly selling of Ale and Beer, and still continueth the same. VVe do therefore send you herewithall the body of the said I. N. commanding you in the name of the Keepers of the Liberty of England to receive him into your said Goal, and there safely to keep him untill such time as he shall be thence delivered by due order of Law. And hereof faile you not, &c.

A Mittimus to the house of Correction for a dangerous Rogue.

Suff.

A. B. and C. D. Esquires, two of the Justices of the Peace of the County of Suff. aforesaid; To the Master or the Governour of the house of Correction at B. or to his Deputy there greeting: VWhereas I. S. a sturdy vagrant Begger was this day of May, in the year of our Lord God 1650. brought before us, and charged as well with Begging and idle wandring abroad, as also with other lewd and disorderly behaviour; so as he appeareth to us to be dangerous to the inferiour sort of people,
contrary

contrary to the Lawes of this Nation in such behalfe
provided. These are therefore to will and require
you to receive the said I. S. and him safely keep in
your said House, untill the next quarter Sessions to
be holden in the said County; and during all such
time as he shall continue with you, that you hold
him to work and labour, and to punish him by put-
ting Fetters and Givies upon him, and by moderate
whipping him, as in good discretion you shall see
cause, yeilding him for his maintenance only so
much as he shall deserve or earn by his labour and
work; and that at the next quarter Sessions you
have the said I. S. there together with this
Precept, &c.

Cantr.

I Have sent you herewithall the body of E. C. of
A.G. in the said County of C. being an idle disso-
lute and disorderly fellow, and one that will not
keep in service, nor follow any honest course of
life. These are therefore to will and require you,
to receive the said E. C. and him safely to keep, un-
till he shall be from thence delivered by warrant
from my self or some other of the Justices of the
Peace of the said County, and in the mean time to
hold him to work, as before.

*A Mittimus for such as hold Land by
force.*

Cantr.

I C. Knight, one of the Justices of the Peace
within the said County of *Cantr.* to the Keeper
of the Goale at &c. and to his Deputy or De-
puties

puties and to every of them, greeting. Whereas upon complaint made unto me this present day by A. B. of W. in the said County, Yeoman; I went immediately to the house of the said A. B. in W. aforesaid, and there found C. D. E. F. and G. H. of aforesaid Labourers, forcibly with strong hand and armed power, holding the same house against the Peace of the Keepers of the Liberty of England, and against the form of the Statute of Parliament thereof made, in the fifteenth year of King Rich. 2. Therefore I lend you (by the bringers hereof) the bodies of the said C. D. E. F. and G. H. convicted of the said forcible holding by mine own View, Testimony, and Record, commanding you in the name of the Keepers of the Liberty, &c. to receive them into your said Goale, and there safely to keep them untill such time as they shall make their Fines to the said Keepers for their said Trespasses, and shall be thence delivered by the order of the Law of the Land. And hereof faile you not &c. Given, &c.

*A Mittimus to the House of Correction, of the
Mother of a Bastard Childe.*

Cantr.

WE have sent you herewithall the body of I. C. of W. in the said County, single woman, being lately delivered of a Bastard Childe, and like to be chargeable to the Parish of W. aforesaid: And for that the said I. C. is able to labour, and that thereby she may the better relieve her self and her said Childe. These are therefore to will and require you to receive the said I. C. into your house, there to be punished and set on work during the

the term of one whole year, according to the Statute in that case provided, &c.

A Mittimus of a reputed Father of a Bastard Childe.

I Send you Herewithall the body of R. C. of B. in the County of C. Labourer, brought before me this day, and charged by F. S. of the same Town, single-woman, to have gotten her with Childe; And for that the said R. refuseth to put in security for his appearance at the next quarter Sessions, and to the end he may be forth coming, when as order shall be taken for the reliefe and discharging of the said Town of B. and for the keeping of the said Childe (when it shall happen to be born) according to the Statute in that case provided. These are therefore in the name of the Keepers of the Liberty of England, &c. and on their behalfe to charge and command you, that immediately you receive the said R. C. and him safely to keep in your said Goale, untill such time as he shall be from thence delivered by order of Law: And hereof faile you not, &c.

I have bestowed somewhat the more paines about these last Presidents for Mittimus, for that I understand that many are of late come into the Commission of the Peace, who have not been much versed in the practicall part of that Office, who may have some help by this which is but a pocket Book, and serve them, or (at least) their Clerks upon any emergent occasion.

And now When any person is brought by Mittimus to the Goale, the Goaler must receive him ; but if he be brought by any other person then a Constable without a Mittimus from a Justice of the Peace, he is not bound to receive him, and must therefore be carried back to the place where he was taken untill a Mittimus be made. And then let us see what is his Duty ; but first let us see who may be Bayled, and who not, and then proceed to the Office of a Goaler.

IF a man be taken upon suspicion of Felony, or indicted of Felony for a thing for which he is Bayleable, and he offer sufficient Surety to the Sheriffe, or other who hath authority to let him go upon Bayle, if he refuse so to do, then he who is kept in prison may have a Writ of *Mayneprise*, the forme of which Writt you may see in *Fitz. Nat. Br. fol. 149. G.*

If a man of good Fame be appealed by an Approver whereby he is detained in Prison, then he may sue a Writ directed to the Sheriffe to Bayle him with good Surety.

So if a man be Appealed by an Approver, and is afterwards taken, and kept in prison, and after the Approver dye, now he may sue this Writ directed to the Sheriffe to Bayle him upon good Bayle, if he be not a notorious Felon, though he be not of good Fame. *Fitz. Nat. Br. fol. 150. D.*

If a man be indicted as accessory to Murder, as
 consent or procurement, or receiving, &c. if he be
 taken for this, he may sue this VVrit directed to
 the Sheriffe that he let him go upon Bayle untill
 the principall be convict or attaint, if he be of
 good Fame. *Ibidem. E.*

If a man be indicted of Trespasse before the Iustices
 of the Peace, and put in prison upon Process
 thereon made, he may sue this VVrit out of the
 Chancery directed to the Sheriffe to take Bayle be-
 fore the Iustices of the Peace, or they may let him
 go upon Bayle if they will. *Ibidem. G.*

If a man be Appealed of Robbery, he may sue
 this VVrit out of the Chancery directed to the
 Sheriffe that he take surety of him to appear before
 the Iustices, and let him go at large, and if he have
 not taken him, that then he forbear to take him, if
 the party offer to finde surety to the Sheriffe. *fol.*
150. A.

If a man by the Kings Commission be detained in
 Prison for Felony, or other misbehaviour, he may
 by his Friends put in surety in the Chancery, that
 he appear before the Iustices, and that he shall be
 of good Behaviour, and this body for body, and
 thereupon he shall have a Writ out of the Chan-
 cery to the Sheriffe, or to the Constable of the Castle
 where he is in Prison to deliver him, if he be in for
 that cause and none other. *Fitz. Nat. Br. fol. 250.*

And for petty Larceny the same Writ, so that he
 be not arraigned of other Felonies. *ibidem. C.*

By the Statute of 23. H. 6. every Sheriffe is bound
 R 2 to

to Bayle every person which is in his keeping, who is taken by Writ, Bill, or Warrant in any personall action, or for indictment of Trespasse if he offer reasonable surety to keep their day given, and in such places where the Bill, VVrit, VVarrant or Indictment is returnable, &c.

But persons Condemned, Out-lawed, or Excommunicated, or such as are committed by command of the Iustices of the Peace, Vagrant persons, and such as refuse to serve, and are in prison in the Sheriffs keeping, all these are excepted, and the Sheriff ought not to bayle them. *ibidem. B.*

Two Iustices of the Peace, whereof one being of the *Quorum* may let Felons suspected, or other persons which are Bayleable, to bayle untill the next generall Sessions, or Goal-delivery, but the Iustices must certifie the Recognizances to the Iustices upon forfeiture of ten pounds, *per Statut. 3. H. 7. cap 3.*

The Iustices of the Goal delivery may punish those that bayle such as are not bayleable by the Statute *de finibus cap. 3. 1.*

By the Statute of 4. *Ed 3.* the Marshall of the Kings Bench might not Bayle or Maineprise those as were indicted or appealed of Felony, and committed to him, but the Iustices of the Kings Bench may punish him.

2. Eliz.

A Man was arraigned of Manslaughter Feloniously, and pleaded *not Guilty*, but for the difficulty

any of the Clergy, he was reprimed without Judgement, and it was moved to the Iustices, whether he were Bayleable at that time or not; and it was held by the Iustices that he was not, because he was not then a vehement suspect person when he is convicted of an offence. For the intent of the Law in this is, that he stand indifferent, whether he be guilty or not till his tryall. *Dyer, fol. 179.*

In Case of Treason no man, neither principall or Felony nor accessary after the attainder of the principall, nor defendant in a heynous crime is bailleable (*id. est*) he shall not be delivered out of Ward, although he finde sufficient sureties to answer the Action. *Stamf. Pl. Cor. fol. 71. and 92* In other cases they are Bayleable upon sufficient surety.

WE have now the Prisoners who did not, or could not, or would not give Baile for their appearances at the Goal-delivery or quarter Sessions of the Peace fast enough, and unless others will forfeit their Recognizances, we shall have them also ready at the Barre to receive their triall if the Bills of Indictment preferred against them be found by the grand Jury. But if that Jury find Ignoramus, and the same be so indorsed on the Indictment, then at the end of the assise or sessions of the peace the party shall be discharged by Proclamation, unless it so fall out that the Justices of the Goal-delivery, or of the Peace at the Sessions shall finde cause to continue him longer in Prison, as being a man of

evill Behaviour and dangerous to be set at liberty, untill he shall give security for his good abearing.

And in like manner it is When a Felon being arraigned is acquitted upon his triall by the Jury of life and death, he may by the discretion of the Justices of the Goal-delivery, or of the Peace, be continued in Prison for some time, as aforesaid.

And such Prisoners against Whom such Bills of Indictment are found to be true, (and so indorsed on the back thereof) being brought to the Bar, and the Indictment openly read unto them, and thereupon arraigned, must presently plead thereunto, either the general issue not guilty, & then the Jury must try the matter of fact, by whose Verdict the prisoner must stand or fall; which Verdict must be recorded by the Clarke of the Assise, if it be at the Goal-delivery, or the Clarke of the Peace if it be at the quarter Sessions.

And if the offence be within Clergy the Prisoner may pray the benefite thereof, as I shall anon declare.

Or the Prisoner may, if he will confess the matter of the Indictment, which being Recorded, the Jury is discharged of him.

But lest the Prisoner should be discouraged When he comes to his triall for want of indifference.

ing. The Law hath so provided that he shall
be tried by any against whom he hath any
cause of exception, or that in his own fancy he
hath dislike, as will appear by the proofes en-
suing.

What challenges a Prisoner may have.

A Prisoner arraigned at the Barr may peremp-
torily challenge, to the number of twenty, one
or another of the Jury Empannelled upon him,
allegedging any cause at all, but his own dislike,
and they shall be discharged, and new put into their
places, and this is in favour of life. But in case of
high Treason no peremptory challenge is allowed,
H. 8. cap. 3. And a difference may be observed be-
tween challenge Principall, and challenge Pe-
remptory, because the challenge peremptory seem-
eth only to be used in matters criminall, and meer-
ly without any cause alleged more then only the
prisoners fantasie. *Stamf. pl. Cor. fol. 124.*

Upon an Indictment of Champerty the King
challenged the Aray, because the Sheriffe had pur-
chased parcell of the Lands of a Stranger by which
the Aray was quashed. *44 Ed. 3. fol. 38 Chall. 98.*

If a man be arraigned upon an Indictment of Fe-
lony, and challenge all the Jurors for cause when
the panell is read, he may challenge all perempto-
ry and relinquish the cause. *Mich. 37. H. 6. fol. 8.
Chall. 48.*

A man indicted of Trespas comes in by process,
R 4 and

and traverseth the Indictment, and challengeth a Juror because he was one of the Indictors, and held no challenge, but in Felony it may be a principall challenge, *Pasc 7. Ed. 4 fol. 4. Chall. 55. 12. lib. Ass. P. 36.*

In conspiracy the Plaintife challenged a Juror, because he was one of the Indictors, and it was held a principall Challenge. But where certain men were indicted of Conspiracy, and found guilty at the suit of the King, and the party sueth a Writ of Conspiracy, and the same panell remaineth against those who where indicted, and held no cause of Challenge, yet the Indictment which the Action conceived was for Felony *27. lib. Ass. P. 13. Chall. 137.*

A man out-lawed for Felony saith, that he was so sick that he could not, &c. and the King hath the Reversion, the party shall have his challenges; and the same Law is if a man who abjures be taken out of the way. *Mich. 4. H. 5, Chall. 153. Mich. 11. Ri. 2. Chall. 166.*

A man arraigned, challenged 36. peremptory and was hanged *Hillar. 3. H. 7, fol. 2. yet 3 H. 7 fol. 12. Chall. 51.* it was held agreeing to the time of *Ed. 4.* that he which challenged 36. should be put to penance.

In an Appeale it was held, that he who is sworn before upon the same panell, which remains for default of Jurors shall not be challenged peremptory afterwards nor without new cause *9. Hen. 5. fol. 7. Chall. 72.* But *Fineux* held the contrary, because peremptory challenge implies cause, unless the other

challenge were at the same time that the peremptory. 14. H 7. fol. 19.

In an Appeale against many, Challenge peremptory for the one was allowed for the others, and then the Plaintiffe challenged the Aray, and where he had but one *Venire facias* before, he prayes to have Everall *Venire fac.* Trin. 9. Ed. 4. fol. 27. Chall. 56.

In an Oyer and Terminer it was held no Challenge that in the same Writ another had pleaded, and this error had passed against him, and assessed damages wherewith this Challenger shall be charged if he be maintened. 29 lib. Assi. P. 3. Chall. 145. And it seemes because he may acquite him, though the other were found guilty.

He that is arraigned of petty Treason, Murder, or Felony shall not challenge peremptory above twenty, but in high Treason or Misprision of Treason no Challenge shall be allowed.

In an Appeale against many which pleaded not guilty, if one *Venire facias* issued against them all, a peremptory challenge for one is a challenge for all, it was said, That it at a Gaol delivery the Inquest be charged with two or three, and one challenge Peremptory, the Clerke will sever the Felons, because the panell is not made between any persons certain. 9. Ed. 4. fol. 27. Chall. 56.

In an Appeale against principall and accessory, which pleaded not guilty, the accessory challenged the Aray, and the principall said nothing, yet it was quait against both.

If a man take a wife and is slain, and after the wife within a year dieth, now the heire shall not have an

an Appeale, because that once the Appeale was given to the wife, in which case at one time the Action was out of his Blood, and therefore cannot be given to the Blood again. *Kelw. Rep. casus incerti temporis fol. 120.*

In an Appeale brought by *Jordan* of the death of *Nicholas* her husband, upon the Indictment the defendant pleaded not guilty, and the Appellant prayed a *Venire facias* returnable at the next Goale delivery, and the defendant prayed a *Venire facias* with a proviso and could not have it: *Kelw. Rep. 7. H. 8.*

Frowicke Justice said, That where there are principall and accessory in case of Robbery, the party may first begin his Appeale against the principall, and afterwards he may commence another Appeale against the accessory. And he said that it was adjudged 9 H. 4. That where a man hath Appealed against the principall in case of Murder, and afterwards he hath another Appeale against him who abetted, hanging the Appeale against the principall, 21. H. 7. *Kelw. Rep. fol. 83.*

Fineux the Cheife Justice in the Kings Bench, when he sat upon a Riot made by *Nubolt* in the Pallace at *Westminster* in the time of the Parliament 3. H. 8. when the said *Nubolt* murdered *Wroughton*, servant to Sir *Henry Willughby*, that he struck him in the door of *Wrigler* in the Woolstaple, and thereof incontinently died in the Pallace, and in the Pallace *Nubolt* was hanged. And upon the Charge that he then gave the Jury (which were charged to enquire especially of this murder) he said that if twenty men went to beate a man, and make an as-
fray

lay upon him, and he is slain by the stroke of one
only, and none other hurt him but he, That he
that stroke him is principall, and all the others are
accessories to the Felony, though he was not stricken
by any of the others, but because their intent at first
was to do a thing not lawfull they are parties to
the wrong. But if no such purpose was at first in
these twenty men, as if they went in aide of the
Sheriffe, or to do another lawfull act, and by
chance one of them strike another that he die, and
the others do nothing to him that is slain, no man
shall be punished for this Felony, but only he that
struck him, and the others are not accessories in this
case. *vide*, note the diversity. *Kelm. Rep. fol. 161.*

The King may challenge a Juror without cause,
or the Array, because the Sheriffe who made it is
cosen to the partie, but no challenge can be made
against him. *27.H.7.cap.26,*

If a man be indicted or appealed of Felony, and
upon his Arraignment will confess the crime where-
of he is indicted. It is (saith the learned *Stamford*)
lib.2.fol.142. in the pleas of the Crown, the best and
surest answer he can make to quiet the conscience
of the Iudge, and to make a good and firme
condemnation, if the said confession proceede not
of feare menace or dares, which if he did, and the
Iudge perceiv it, he ought not to take or Record
the Confession but cause him to plead *not guilty*
and put it upon the Jury to try it.

A Woman was indicted for felonious taking of
bread to the value of two shillings, and being there-
of arraigned confessed the Felony, & said she did it
by the commandement of her husband, & the Iudge
in

in pitty would not Record her confession, but caused her to plead *not guilty*, whereupon the Jury found that she stole the bread by the compulsion of her husband against her will, for which cause she was discharged 27. *Aff. plea.* 50. cited in the Exposition of the Termes of the Law. fol. 74.

Another kinde of Confession made by an Offender in Felony (which is not in Court before the Judge) but before a Coroner in a Church or other priviledged place, in which the offender by the ancient Law of the Realme, is to be abjured the Land, *ibidem*. But this Law is *obsolete*.

A third kinde of Confession is, when the Prisoner at the Barr at his Arraignment confesseth the Indictment to be true, and that he hath committed the offence whereof he is indicted, and there becomes an Approver, and prayes that he may have a Coroner assigned unto him to whom he may make relation of the offences, *ibidem*. And if he prove his Approvement true, the Kings of this Realme have used to pardon their lives, and only banish them. *Stamf. Pl. Cor. fol. 143.*

In an Indictment of Felony, if the defendant confess the Indictment, he may appeach others of the same offence, in which case he is called an Approver, which approvement cannot be but in Felony or Treason, and he cannot Approve one that hath received him, for the Approvement ought to be of such offence, as he together with the other committed, nor of him that abbetted him, or procured him to do the Felony. 9. H. 6. *Fitz Coram. fol. 231. Finch's ey. fol. 81.*

And

And now that we are upon the Scene in which the Reverend Judges are to act their parts in the business which concernes the lives of such as come before them for triall of their lives. I shall intreat the Reader to give me leave to speak a little concerning them, which shall be but little; my intent being only to let the world know in what estimation they ought to be held, being persons authorized by the chief Magistrate to administer Justice in civil causes between partie and pattie, and in Criminals (which is the business we now handle) betwixt him and the people, and therefore are to provide, and so that the Prisoner have no wrong for want of the knowledge of the Law, he having no other Councell allowed him; and his life which ought to be pretious standing at the Stake. And therefore they come not *ius dare*, but *ius dicere* to declare the known Laws, and to interpret the ambiguous, and as well to relieve the Innocent, as to punish the willfully nocent, and that not alwayes, neither according to their rigour of the Law. For sometimes (as it is said elsewhere) *litera occidit*, contrary to the intent of the Law, or the Law Makers; and a Reverend Divine of this Nation (long since with God) Preached before the Iudges of Assise, told them, *That they should banish some Justices if they should banish all favour out of Judgement, and (said he) the Imperiall Laws (which he did well know he being a Doctor of the Laws) though they detest respect of persons, yet I am sure favour the Defendant more then the Plaintiff, and that favours within the Cause, not favours without the Cause, legall favours not personal, are in judgement considerable; but how to do this well is the difficulty, and there the Iudge must have* *Scienciam & conscienciam*, knowledge by which he is enabled

enabled, conscience by which he is in his heart resolved to administer Iustice equally to all men. It were therefore to be wished, though it cannot be hoped for, for *donec erint homines erint vitia*, and in this life there is no perfection, That all Iudges (and Magistrates too) were such as *Jethro* wished *Moses* to make choice of, to assist him in the Government of the people of *Israel* (*viz*) *Men of courage loving truth and hating covetousness.*

I have long since seen in a Manuscript a peece of a Sermon upon this Text, which thus began. Doubtless the direction was good concerning the qualification of persons to be chosen for this employment, but to finde such — *hic labor hoc opus est.* For they must not (saith he) be like *Jeroboams* Priests of the lowest of the people, not unlearned, not ignorant, nor by favour called from the Barr to the Bench, but they must be picked out of the choicest, gravest and most experienced, and most conscientious of their profession. But old men, saith he, such as Iudges were wont (and ought stil to be) are commonly timorous, & will therefore want the courage which they ought to have, and so will want the first qualification, and it is commonly observed, that covetousness cleaves fastest unto old men, who having been getters all their life time, are then loth to give over their old practise, and will therefore want the third qualification *hating covetousness*; and then tells us of a passage in a Sermon Preached by Doctor *Bridges* sometimes Deane of *Sarum* before the Iudges at the Assises ther holden. In which having followed the doctrinal part of his Text, as long as he thought fit, he told the Iudges, that because he did know they were wise and learned men they needed no instruction concerning their duties, and therefore for Application would only tell them a Tale. And

And it was of a poor labouring man in the County who had lost his sight, and being thereby disabled from working, the good people thereabouts gave him leave to come every Sunday and Holiday (for then there were such kept in commemoration of Christ and his holy Apostles) to come to the neighbouring Parish Churches to take the benevolence of well disposed persons, which he did only by holding out his hand, both there and elsewhere when he heard any body comming towards him, and this continued about seven years, at the end whereof it pleased God to restore him to his sight, and he fell again to his labour, and earned his living thereby, nevertheless the habite which this man had gotten in that seven years of his blindness made him still when he saw any man come towards him to hold out his hand.

And now my Lords (said he) you that are now Judges, after you were first called to the Barr (if not before) held out your hands for Fees, it may be twice seven years before you came to be Readers, and perhaps seven years more before you were called to be Serjeants, and all that time held out your hands for Fees too, and perhaps after you were Serjeants before you came to be Iudges seven years more.

I pray God that the Custome of holding out your hands so many seven years to take Fees when you were practisers, do not make you hold out your hands still for—now you are Judges; and so ends the Doctors Tale. By which he intimates the force, and in some cases the danger of Custome, and the Comentator out of the premises seemes to draw this conclusion, that old men are rimerous and covetous, and would inferr that Iudges being such, will want two of the qualifications before mentioned. I
confess

confess all this may be true if they be considered *puris naturalibus*, but Grace overcomes Nature, and old men knowing that their dayes are but few, will make the best improvement of their time to Gods glory, and the discharge of their own consciences, knowing what account they are to make in another world, for the things done in this.

And surely it concerns the Common wealth to begg of God that he will move the Supream Magistrate to put men of Knowledge and conscience in places of Iudicature, because of the many difficulties which they shall meete withall in their imployment, where their judgments must be much guided by witnesses & Jurors sometimes against their consciences, which in case of a mans life is dangerous, and by experience we finde that many have suffered death wrongfully, to which purpose I will (I hope without impertinency) relate a short Story, which was thus;

A man passing through the Forrest of *Needwood* in *Staffordshire* was robbed and murdered, near unto the dwelling house of one *Cross* an under Keeper, and inquisition being made by the Coroner concerning this murder, upon such Evidence as was then given, *Cross* and his Son, and his Sons wife were indicted of the murder, and upon the Indictment arraigned at *Stafford Assises* before Sir *John Croke*, and although (as I heard) the Evidence in many mens judgements was not convincing, and that the prisoners did deny that they were guilty of the offence, yet the Jury found them all three guilty of murder, and had their judgement to be hanged at the place where the murdered man was found, which was neer their Lodge, and being ready to die; upon their salvation they protested their innocency, and there died. Seven years after, a Bag-

piper

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...per (whose name as I remember) was *Money Penny*,
...ing for his misbehaviour committed to the House
... Correction; and being weary of his habitation,
...ade means to acquaint some Iustices of the Peace
... of the County, that if he might obtain his pardon,
...e would do great service to the Country, by disco-
...vering a great number of Theeves, and Receivers
... of them in that and other bordering Counties;
... which being done, he did appeach divers men
... (before unsuspected for such) gave evidence
... against them, and hanged such as could not by
... course of Law be discharged, as by Clergy, &c. and
... at last confest that he killed the man, and the devi-
... ers he used to make *Crafts*, his Son, and daughter in
... Law to be suspected, and attainted.

This Relation I have made as a Caution both to
... Judges and Jurors how they take away mens lives,
... being more safe (where the proof is not without
... exception) to save ten nocent, then to condemne
... one innocent, And something to this purpose, I
... shall adde one Story more, the like whereof it may
... be the Reader never yet did heare of, and thus it was;
... In the County of *Salop*, about six miles from
... *Shrewesburie*, there is a Village called *Ruckley*,
... and a Wood called *Ruckley Wood*; In which Wood
... one Summer morning about Sun rising, one of
... the Townsmen found a man newly killed, his
... blood yet reeking, and immediatly acquainted a
... Justice of Peace dwelling fast by with what he had
... seen, who raised the Country to find the Manslayers.
... But forasmuch as there had been formerly some
... unkindness between the man killed, and the man
... that found him; the credulous multitude would
... presently have the world beleieve that he which
... first found the man killed him. A Coroner was
... sent for, an Inquest sworn upon the view, of which
... S eleven

eleven agreed to finde this man the Manslayer; but one of the twelve not consenting, they were once or twice, adjourned by reason of this mans dissenting; the last adjournment being till the Friday before the Assises, the night before which day the wife of the accused, and half condemned person dreamed that this dissenting Juror could give some information concerning the death of the man, and desired Sir Humphry Lee (the Iustice before mentioned) to send for this man and discover what he could concerning the premises, which he did, and demanding the reason of his dissent from the rest of his neighbours, he answered, that in his conscience the man accused was not guilty, what moves you to think so (said the Iustice) do you know any thing of it; yes, said he, for I my self killed him, for which he was the next weeke arraigned and hanged. What a case had the other man (who was innocent) been in if the Manslayer had not been of his lury, and made a conscience of spilling more blood? another good caution for Jurors and Coroners too.

There is therefore one other Ingredient necessary for a Judge, called Discretion, a dram wherof will season a great deal of Learning; now if you ask me what discretion is, I dare not take upon me to give a precise definition; for, though the word *descretio* be crept into the Dictionary, as coming from the Word *Discerna*, yet I have heard a very great Critick say, that the word is not to be found among the ancient *Latine* Writers, nor the elegant moderne, nevertheless by our common acceptation, it is a sober and modest management of any business; according to right reason without passion; for learning in an undiscree mans head is like a sharpe Sword in a rash mans hand, and without Discretion

mans conscience is but a weak instrument for a
like Minister.

And now while I mention the word, I remember
a passage which relates unto it, and it was thus:
In King James his time, Justice Kingsmill, one of
the Justices of the Common-Pleas riding the Sum-
mer Circuit, did finde in one of the Goales a Se-
minary Priest, who was indicted, arraigned, and ex-
ecuted, which being ill relented by some of his
friends, means was made to acquaint the King ther-
with, and complained of it as an act of Severity,
and contrary to his gracious clemency; The King
referred the examination of the businels to the
Lords of the Council, who sent for the Judge, and
expostulated the rigour of his proceeding in the
Case, which he justified, as warranted by the known
Laws of the Realme; but some of the Lords told
him that he knowing the Kings tenderness in shed-
ding of blood might in *distraction* have forborne the
execution. The Judge replied, That his Majestie,
at the end of *Trinity Terme*, in his Speech to the
Judges, willed them to be careful to execute the
Laws, and particularly those against Seminary
Priests, and that he could not understand the Kings
meaning otherwise then by his words, according to
truth, and the known Laws of the Land, he was
sure he had done his duty. But as for the matter of
distraction he confessed he had no more then it would
please their Lordships to allow him. With which an-
swer the King being acquainted, he swore it was a
good one, and so that Story ended, and so should
mine too, but that for the honour of Justice Dader,
whom I propound as a president to all Judges for
Gravity and Piety, as the Writer of the *Trojan* war
in *Ulysses* as an example of Temperance, and the
Case was thus;

AT Shropshire Assises held at Shrewesbury, there was a rude fellow indicted, arraigned, and condemned, which he took so impatiently, that he did fly in the faces of Iudge and Iury, and said, that the Sentence was unjust, cruell, and bloody, which the Iudge being informed of, caused him to be brought to the upper Barr, and without any passion, laid before him the foulness of the offence, and the justness of his condemnation, and with his wildome and discretion so handled the matter, that the froward and furious prisoner became presently a Convert, gave the Iudge many thanks for the pains he had taken with him to make him see his error, and putting him in the way for saving of his soule, acknowledged the Sentence of death to be most just, that he desired not to live any longer, and died penitently and patiently; and therefore I say to every Judge — *Vade & fac tu similiter.*

I have now done my Stories, which I with other *prodesse aut delectare Legentem*, and am come to another sort of Prisoners, which are to receive their triall by the Verdict of twelve men; wherein if any man be contumacious, or thinking to save his estate, will stand mute, and not answer to the indictment, nor put himself upon the Countrey, he is to have present judgement (unless the Court in mercy will give him some further time to think upon his condition) to suffer *peine fort & dure*, according to the Language of the Law, and in English, *A paine hard and strong*, and indeed so it is if it were put in execution according to the letter of the Law, which is, That he shall be sent back to the Prison from whence he came, and put into a low house, and there shall lie naked upon the bare earth without any straw, rushes,

rushes, or other and without any covering about him, saving somewhat to cover his privy Members, and that he shall lie upon his back, and that his head be covered, and his teete stretched out, and that one of his armes be stretched to one quarter of the house with a cord, and the other arme to the other quarters, and in like manner his leggs, and that upon his body be laid iron and stone as much as he can beare, and more, and on the first day after, he shall have bread made of Barley three morsells without any drink, and the next day he shall drink three as much as he can of the water which is next the door of the Prison (except running water) without any bread, and this shall be his diet untill he die, *Stamf Pl. Cor. fol 150.* and not untill he will give a direct answer as *Brittan* affirmed. And though the punishment be very grievous, yet it were well, if the soule which is immortall should have no share therein; for it is a dangerous, if not a desperate thing for a man to expose himself to such a certain misery and punishment of the body, and so uncertain and dangerous hazard of his soule, to avoid that which perhaps would not befall him (unless the Case were so plain that no defence could be made) for it might so fall out, that either the Evidence would not prove such as might certainly convince him, or the Jury might favour him if they could finde any means to do it, or the Judge might be more mercifull to him, then he was to himself: Howsoever I conceive it most safe for his soule to put himself upon God and the Countrey (the usuall triall) where it is to be presumed he shall have Iustice, and it may be upon some circumstances favour.

If the indictment be for goods stolne under the value of 12d. or if the Jury do value them under
S 3 twelve

twelve pence, which in the Law Language is called *Petty Larceny*; the Prisoner shall be adjudged to be whipt, the body to be stripped to the waste, and whipt till he be bloody.

The Office of a Goaler, and concerning Escapes.

HAVING here before in this Treatise upon severall Emergencies, occasion to mention the Goalers and Keepers of Prisons, and the Houses of Correction, which as they be necessary Officers in the Common-wealth, so is their Office full of danger and trouble; For the Keepers of Goales give great security to the Sheriff for his indemnity, for that he is in Law charged with all such Prisoners committed to his charge. To the end therefore that such as are of a milde and gentle nature may not be abused, and may know what they may lawfully do; and that such as are of a more rigid and cruel nature may likewise know what they ought not to do. I think it convenient to say somewhat, (though it will not be much) concerning their duty and Office.

First that they must receive all Offenders sent unto them by *Mittimus*, or other Warrant from any of the Justices of the Peace of the County, or brought unto them by any Constable or other *Peace Officer*, but from any other they are not bound

bound to receive them, nor take them in charge. But when they have any person in actual possession, they shall be answerable for their escapes, according to the quality of the Offence.

And Mr. Dalton tells us, that the Lord chief Justice Popham did cause one *Slaver* (a Goaler at Cambridge) to be indicted, arraigned, and hanged, for an escape of a Felon suffered by him.

But we must presume that this was some notorious Felon, and that the Offence was very Capital, and that the escape was voluntary, otherwise the Judgement had been over-severe; for let a Goaler do what he can, and use all possible industry that can be required or imagined; yet such Art may be used by a prisoner, and such helps and assistances may be given him, that he may make an escape though he be laden with Irons, which may be taken off by devices.

And it is not long since, that the Prisoners in a Goale not far from London, conspiring together to make an escape, which they could not make through any Doors, Grates, or Walls, found means to dig under the Prison, and made their way in the earth a good way, and then pulled down the earth, and made a hole into the Street, by which some of them escaped before it was discovered. In this or such like cases if the Goaler should be punished according to the letter of the Law, it would seem very hard, no man being required to impossibilities.

This difference therefore is made; viz. if the escape were by default (which we call a negligent

escape) the Keepers of the Liberty of England, &c. may charge the Goaler, if they will, or the Sheriff upon the Statute 14. *Edw 3. Cap. 9* and the Iudges do in these cases make as favourable exposition as with conveniency and safety they may.

Or else voluntary, which two sorts of escapes are thus differenced and defined.

A negligent escape, according to Mr. *Stamford* in his Pleas of the Crown, fol. 33. is when the partie arrested or imprisoned doth escape against the will of him that arrested or imprisoned him, and is not freshly pursued and taken again before he hath lost the sight of him which escaped, the penalty whereof seemeth to be openly a Fine at the discretion of the Iudges or Iustices.

And the same learned man makes this difference, that if the escape be of a prisoner attainted, the Fine shall be 100 l. but if only indicted, 100 s. and were taken upon suspicion only, seemes dispensable.

A voluntary escape is where one doth arrest, or hath imprisoned another for Felony or other Offence, and afterwards voluntarily let him go at liberty where he will.

And if the escape be wilfull in the Goaler (which is Felony in him) the Sheriff shall not be bound to answer to the Eclony, but may be fined to the value of his Goods, *Stamf. pl. Coron.*

And in case of voluntary escape, if the arrest or imprisonment were for *Treason*, it shall be adjudged *Treason* in him, which did voluntarily suffer the prisoner

prisoner to escape, and if it were Felony, then it shall be adjudged Felony, and if for Trespass, it shall be adjudged Treipsals.

In case of Trespals or other Offences whatsoever (being under Treason or Felony) there is no difference whether the Escape suffered by the Officer be voluntary or negligent, but that the Officer in both cases shall be fined for the escape according to the default, by the discretion of those that be Judges thereof.

Queen Elizabeth pardoned one who killed another; the wife of the man slain, suing an Appeale was detained in prison at her suit; the Goaler after suffers the Manslayer voluntarily to go at large, and he made an escape; which in Mr. *Plowden* that famous Lawyer his Opinion was Felony in the Goaler, though he was no Felon as to the Queen, in regard of his pardon from the Queen.

This I believe is a case known to few Goalers, in regard whereof I thought good to set it down, that knowing it, they may be the more circumspect when such a case shall happen, *Plowd.* 147.

A prisoner found guilty of petty Larceny, is adjudged to lye in prison a moneth for his punishment, and after the moneth he breaks prison, and escapeth; and the question being what this is in the Prisoner, & what in the Goaler; It was holden that the Goaler shall be charged with the escape: But if the prisoner be discharged, paying his Fees, here the Goaler is not charged with the escape, and if he be discharged paying his Fees, he is a prisoner till he hath payed his Fees, 21. H. 7. cap. 17.

And

And it is said that a voluntary escape in Felony is no Felony, if the Act done were no Felony at the time of the escape made: As if one man strike another and hurt him mortally, whereupon the Constable arrests him that gave the stroke, and after suffers him willingly to escape, and after the man so hurt dieth of that stroke, this escape is no Felony either in the Constable or the Prisoner, yet the Constable shall be fined at the discretion of the Iudges.

If a man be wounded, and the striker is voluntarily let go at large by the Goaler, and after death ensueth to the person hurt, yet this is no felonious escape in the Goaler, 11.H.4.ca.12.

The voluntary suffering him to escape who hath killed another, *se defendendo*, or by disadventure, or of him that hath committed petty Larceny seemeth to be no Felony; for that these Offences are not Felony of death, but he that sufferth the escape shall be fined, *Crom.* 39. yet there is a Quere, for they that suffered, are not to Judge whether it be Felony or not.

If a Iustice of Peace shall send for a Felon out of the Goal, and shall deliver him without bail, this seemeth to be a voluntary escape and so Felony in the Iustice.

If the Iustice of Peace or Sheriffe shall baile one that is not baileable, this is an escape in Law.

And if one be brought before a Iustice of Peace for suspicion of Felony, and confesses it, and yet he shall

shall suffer the prisoner to go at large without baile, that is a voluntary escape in the Iustice.

If a Goaler by *dures* of imprisonment and pain, enforce his prisoner to become an *Approver* (that is an accuser of others as helpers with him in the Felony) this is Felony in the Goaler, although the *appellee*, or party accused be acquir, or shall dye before he be arrested upon the Appeal.

If a Goaler shall only procure his prisoner to accuse another of Felony, this is Felony, 18. *Ed. 3.* yet the Statute of *Ed. 3.* seemeth to extend only where the Goaler shall do this by great *dures* or pain.

And if a prisoner by *Dures* of the Goaler, cometh to untimely death, this is murder in the Goaler; and the Law implieth malice in respect of the cruelty: And for this cause if any man dieth in prison, the Coroner ought to sit upon his body, to enquire whether his death came by the *Dures* of the Goaler. *Briton, Cap. 11. de prisens, fol. 18.*

If it shall be further demanded how prisoners for Treason or any other Offence ought to be used in Prison, the learned *Bracton* will tell you; That lying men in Chaines, was against the Law, for that a Prison was a place to keep, not to punish Prisoners, *lib. 3. fol. 154.*

And in another place he saith, when a Prisoner is to be brought before a Judge, he ought not to be brought manacled, though sometimes for fear of escaping, they be shackled. And *Briton* saith, If Prisoners come in judgement to answer, they shall be
out

Out of Irons, and all manner of Bonds, so that their Paine shall not take away any manner of reason, nor them constrain to answer, but at their free will, *cap. 5. fol. 14.*

And *Cap. 11. fol. 17* he saith. And of Prisoners we will that none shall be put in Irons, but those which shall be taken for Felony, or Trespass in Parks; And we defend that otherwise, they shall not be punished or tormented.

And *Fleta* saith, That albeit be lawfull for the Sheriff to keep offenders in prison, yet not to punish them, but to keep them.

And the *Mirror* saith, it is an abuse that prisoners be charged with Irons, or put to any paine before they be attainted, *Cap. 8. Sect. 1.*

And whereas in the eighth year of the Raige of *Ed. 2.* a president is brought, that a Priest was arraigned, and put himself upon his Countrey, and stood at the Barre in Irons, but by command of the Judge, he was freed from his Irons, *Sir Ed. Coke* who voucheth it, saith, There is no difference in Law between a Priest and a Lay-man, as to Irons, and thereupon concludes.

That where the Law requires that a Prisoner should be kept in *salva & custodia arcta*, yet that it must be without paine or torment to the prisoner.

And *Sir Ed. Coke* (who cites these opinions, in the conclusion of his discourse of petty Treason) saith, That it is against *Magna Charta cap. 29.*

And that all the ancient Authors are against
paine

aine or torment to be inflicted upon the Prisoner before his attainder, nor after, but according to the judgement; and that there is no opinion in the Law Books, or any judiciall Record for the maintenance of tortures or torments. And doth implicitly disallow the Rack or Brake, first brought into England by John Holland Duke of Exeter, whom H. 6. made Constable of the Tower.

But how these opinions will secure a Goaler against his prisoners (who will venture hard for their liberty rather then lye in a strait Prison) because I cannot determine, must be left to their discretion, who must answer for their escapes.

Mich. 5. Ed. 6.

BRooke in his *Abridgement* titl. *Escape. fol. 43:* saith, That the successor to a Goaler may well plead that the Escape was in the time of his Predecessor, and that he took the Prisoner againe and imprisoned him, and delivered him in prison to the defendant at his entering into his Office, and that he suffered him to escape. For this is a Confession and avoidance, for that he was not in execution by the second imprisonment of the party, and by consequence no escape in Law. *Dyer fol. 67:*

Upon an *Action of debt* brought against the Sheriff of Essex upon an escape, it fell out upon the Evidence, that the Prisoner having been in execution, was wilfully let go out of prison by the Goaler, and after came into the Gaale againe, and there remained till the time of another Sheriffe, and so escaped; whereupon this action was brought, and the Lord Chiefe Justice Hobard directed that the Sheriff was not answerable to this action.

For

For when the prisoner was let go abroad by the Goaler, the execution was utterly discharged, so that he could not lawfully, or in fact be in execution by Law, though the party should yeeld himself unto it, and the Creditor so allowed, and therefore the Sheriffe cannot be answerable chargeable with him Hob. Rep. fol. 285.

If a man be committed to the Goale by the Auditors for arrearages of his accompt, and afterwards he escape out of prison, now the Goaler shall satisfie the party at whose suit he was committed unto him, and the Goaler shall have a speciall Writ upon the Case against the prisoner to answer for the escape, and the damages the Goaler hath sustained thereby. But it seemeth reasonable, that the Goaler may take him again, and so is the opinion of some Books. Fitz. Nat. Br. fol. 130. B.

Every Goaler having any prisoners for Felony committed unto him shall certifie the names of every such prisoners in his keeping, at the next generall Goale delivery, upon pain to forfeit five pounds to the King for every default. per. Stat. 3. 7.

Mich. 8. Hen. 8. Rot. 21.

Sir John Savtre Knight, being Sheriffe of Worcester Shire, for tearme of his life, was indicted for two Escapes of Felons, Felonice & voluntarie, by two severall Indictments, and also because he kept his Turne in an unusuall place, contra formam Stat. de Magna Charta, which three Indictments were removed into the Kings Bench, and the Kings Attorney put an information against him, upon them, and by the Court the Office of Shevalery was let into the Kings hands.

If

If a Goaler killeth an unruly prisoner which hath assault him, it is no Felony, *Lamb. 235.*

Pach. 26. Eliz. in the Common Pleas.

A Man was bound in a Recognizance for his good behaviour, and was arrested for suspicion of Felony by a Constable, and that he escaped from him, exception was taken, because it was not shewed that the Felony was committed, which might cause suspicion, for that was traversable, *Per curiam* it needed not, for although no such Felony was committed, and although the arrest was tortious, yet he forfeited his Recognizance by making an escape, which was a misbehaviour.

A Town which suffereth a man who hath slain one there to escape by day, (*viz.*) so long as it is day-light, though it be at the houre of Evening, for this is accounted part of the day, and not of the night, and though the slaying was by mischance, for they must not judge thereof, *22. Ed. 3. Fitz. Cor. fol. 238.*

The Sheriffe ought to see execution done according to the judgement, and not otherwise. If he therefore do behead a man whose judgement was to be hanged, it is Felony in him. *35. H. 6. Finch. ley, fol. 8.*

A woman shal not be quartered for treason *feil.* for the decency of her sex, but only drawn and hanged. *Finch. ley, fol. 14.*

Clergy

Clergy.

THe next help which a prisoner indicted of Felony and found guilty by confession or Verdict, is the benefit of Clergy, which being in some cases allowed, and in some cases denied, I have thought good before I declare in what cases it is denied, to shew in what cases it is allowed, and how the benefit thereof hath been enlarged by divers Statutes.

Before the Statute of 25. *Ed. 3. Ca. 5.* If a man were indicted of severall Felonies, and had his Clergy for one, the Justices would not deliver him to the Ordinary, but remande him to prison till he were arraigned of the other Indictments, which arraignment should be when the Justices would appoint; for remedy whereof that Statute was made, which willerth that the prisoner shall presently be arraigned for all, or else be delivered to the Ordinary, which Statute is confirmed, 18. *El. 7.* Yet the Justices before whom such Clergy shall be allowed, may for their further correction detain them for any time less then a year in prison.

The benefit of Clergy is a refuge provided by Common Law in favour of Learning, and at first was not allowed but to Clerks, in order secular, and religious, as appeareth by the Statutes 25. *Ed. 3. ca. 4.* and 4. *H. 4. cap. 2.* yet now the Common Law extends it to all the Kings Subjects that could read, as appears, 4. *H. 7. cap. 13.* in favour of Learning in generall, and in reverence of mankind, and mans blood, which in persons of use was not to be shed slightly.

The

The time of claiming the Clergy must not be till after the Indictment, and the offender convicted, both for the retaining the jurisdiction over the Clergy, and also to bring forfeiture of goods to the King.

In giving the Clergy at the Common Law, three things are to be observed. 1. The Court is not to tender it *Ex officio*, but the offender is to pray it, being in *favore*, and a remitting of the rigour of the Law. 2. If the offender pray it, it is not in the power of the Judge to deny it, but it must be allowed him, where by the Law it is allowable. 3. The Ordinary cannot defeat him of it, neither by directly refusing him, or indirectly by practise, by answering the Court that he reads not as a Clerke, when as he did indeed in the judgement of the Court; or if he do refuse him, yet he shall not die; and if the Ordinary will wilfully absent himself, the Court may Fine him, and proceed without him.

On the other side if the offence be within Clergy, the prisoner may pray the benefite thereof and shall be burned in the hand if he do read, the judgement whereof rests in the breasts of the Ordinary. For though the prisoner cannot read and the ludge know so much, and would not allow of his reading, being by prompting, or otherwise, yet if he do but utter any wordes which may seeme to be the words of the *Psalme* (which is commonly the *Psalme* of *Mercy*, and for the most part learned by rote) without right pronouncing of the words; yet if the Ordinary say that he readeth like a Clerke, though the ludge may fine the Ordinary for his false information of the Court, yet the prisoner shall have the benefit of his Clergy (as some say) and be burned

ned in the hand, if for Felony with an *F.* if convicted for a Rogue with a *R.* in the shoulder.

And Purgation being taken away by Statute, and his Clergy granted him, he shall forthwith be enlarged and delivered out of the prison by the justices, and is freed both a *pena & culpa.*

And therefore the Lord Hobert held, that if a man should call him that hath had his Clergy, and freed a *pena & culpa* should call him *Felon* or *Theif*, he may have his Action as upon any other pardon; and amounts to a pardon by good construction of the Law.

A Parson was deprived for *Adultery*, afterwards a generall pardon came which pardoned the *Adultery*, and yet was adjudged *ipso facto*, that the Parson was restord to his Ecclesiasticall right.

Hillar. 17. Jac.

SAmuel Serle, Parson of Heydon, German, brings a Prohibition again *John Williams*, reciting the Statute of Queen *Elizabeth* of Clergy where he was Parson, and was indicted, 13. *Jac.* before Hobard Chiefe Iustice and *Haughton* for Manslaughter, for death of one *Symonds* and was convicted for the same, and was allowed his Clergy, but not burnt in the hand because of his Orders, but by the judgement of the Court was delivered out of Prison, by which Iudgement he was purged and acquitted of the Felony. But the defendant pretending him to stand still convicted of the Felony and thereby deprived of his Benefite, and the Church to be void, and was presented unto it by Doctor *Donne*, and after much dispute upon a Demurrer upon Argument

ment by all the Iudges, Iudgement was given for the plaintiffe, and that he ought not to be questioned in the Spirituall Coutt for the Manslaughter. *Hob. Rep. fol. 41.*

But by the Statute of 18. *Elix. car. 17.* It was enacted, That the Justice before whom such allowance of Clergy is had. shall and may for the further correction of such, detaine and keep them in prison for such convenient time as they shall think fit, so the time exceeds not a years imprisonment:

Trin. 22. H. 7. One was arraigned for Murder, and prayed his Clergy, and the Ordinary was called and came, and the Justices demanded of him where his commission was, which he shewed; by which Commission he had Authority to receive all Clerks indicted for Felony, but not for Murder; and it was moved, whether by this Commission the Ordinary had authority to receive him who was indicted of Murder. And the Chiefe Justice, and all his fellows said, that he might; for they said Murder is Felony, and if a Commission be made to two to enquire of all Felonies, they may enquire of Murder. Notwithstanding that the Charter of the Kings Pardon of all Felonies will not be available to him that is indicted for Murder. For by this Statute *Kelw. Rep. fol. 92.* — But by Act of Parliament, 1. *Ed. 6.* Murder is excepted from Clergy.

Pasch. 7. & 8. H. 8. At a Goal delivery held at *Southwarke* before *Fineux* and another Iustice, It was declared, That if a man have abjured the Realme and returne without the Kings Licence, being within the Land and be taken, and arraigned for it,

yet he shall have his Clergie, and it was granted
Kelm. rep. fo. 168.

Clergy was allowed to an accessory for Stealing of Horses and Mares; and well, because the Statute is taken strictly, and it speakes not expressly but of the Principall, by the opinion of the Justices
Dyer. fo. 99.

Pasche 2. Eliz.

A man is indicted of Robbing another in his dwelling house he being in the said house and put in feare, and another is indicted, for that he feloniously before the said robbery did procure and Councell the principall to Commit the Robbery, in which Indictment of the accessory the word (Maliciously) is left out, Quære, and it is to be considered, if this word (Maliciously) be referred to petty Treason, or murder in which, malice might be in the procurement, and not to robberies in which commonly there is noe malice, but rather Coverousnes to have another mans goods: And it was the opinion of all the Justices of assise in their Assembly, except the chiefe Iustice and *Broome* that for default of the word (Maliciously) the partie should have his Clergy, because the word (Malitious) refers aswell to robberies as burning of Houses, *Dyer. fo. 183.*

Mich. 3. and 4. Eliz.

BY the opinion of all the Iustices of Assise Assembled together at Serjeants Inn that if one may have his Clergy granted in Case of Felony, and

and prayes his book, and in truth he cannot reade, and so it is recorded by the Ordinary and also by the Court, and the clause *non legit ut Clericus* entered and yet for some cause he is reprimed till the next Sessions and then he is againe demanded if he can reade, and then he can reade, he shall have his Clergy, notwithstanding the other record in *favorem vite* for he shall have it allowed him under the Gallows. by 34. H. 6. if the Iudge passe thereby *et multo magis hic* and although he be taught to learne his letters and to reade, this shall save his life, but the Goaler shall be punished for it and the entryde *non Legit ut clericus* is of no force but void, and it is not used to enter the Clergie. but *ubi legit ut Clericus* Dyer fo. 250.

Eodem Termino.

IT was moved by the Iustices of Assise there, if a theefe be condemned to be hanged, and yet the Iustices command the Shiriffe to respite execution for six weeks only, and after the Sessions adjourned, (that is to say) in the vacation, before the six weeks expired the said Iustices Command the Shiriff to respite the execution longer. The *Quere* was, whether they might do this, because their Commission for Goale delivery, seemed to be ended by their adjournment and they use to have a new Commission at every time they come to a Sessions of Goale delivery, *et tamen per opinionem omnium Iusticiarum* the Commandment for further respite was good enough, and the Custome of the Realme hath alwayes been so, and this proves the Case of allowance of Clergy under the Gallows Dyer *ibidem*.

Trin. 4. Eliz.

A Man had Committed two Felonies at one time, for one of which he might have Clergie and for the other not, he is first indicted of the felony for which his Clergie lay, and was arraigned thereof, and pleaded not guilty; and was found guilty, and prayed his booke, which given him, *non legit ut Clericus* and this is entred by the Clercke but noe word of *tradatur ordinario* and yet he is deprived without judgement and after at another Session he is indicted of another felony, and is arraigned upon, and pleades not guilty, and is found guilty, and praid his booke, and had it, and read, *sed non Cremater, neque traditur Ordinario* and all this was entred *cum Curia avisare* and judgment was respited a yeare and more, and now the question was moved by the Recorder of London (before whom and others the plea was) whether he shall have judgement to be hangd, or whether he shall be delivered to the Ordinary as a Clerck convict; and it was debated at Serjants Inne by all the Justices of either bench, and of Assise, and their divided in their opinions seven against seven and nothing in the point resolved. But *Stamford pl. Coron. fo. 120* saith that the prisoner ought to be charged with all crimes imposed upon him, before he shall have his Clergie allowed, &c. *unde vide plus Dyer fol. 215*.

Trin. 5. Eliz.

AT the Goale delivery at Newgate after the end of this terme one was indicted *Quod vi et armis apud B. in via Regia ibidem xls. in pecuniis numeratis*

numeratis &c. felonice cepit a persona I. S. et habuit librum in hoc casu eo quod non est Robberia, if the person be not put in teare, as by assault and violence.

Mich. 6 and 7. Eliz.

One had murdered his Master, 4. *Regine nunc*, and was indicted as of willfull murder without the word *proditione* in the Indictment, and upon the evidence it appeared to the Court that it was petit Treason which Office by the Act of generall pardon of 5. *Regine nunc* is discharged and pardoned as to the *Queene* but murder is excepted by the Act, and upon this indictment the partie was arraigned and found guilty, yet Iustice *walsh* reprieved the prisoner without Iudgement, to the next Assise *pro quo reprehendetur a quibusdam sed sine causa ut videtur justinar Dyer fo. 235.*

At an Assise in the County of *Salop*, in the time of Queen *Elizabeth*, two Servants of a Gentleman in that Country (whereof one was his Clerk) the Gentleman being a Justice of the Peace, the other the Groom of his staple, were arraigned for the death of a Gentleman. The Indictment was drawn for wilfull murther, and was prosecuted with much violence by the Mother of him that was slain, and so found by the Grand Iury: Nevertheles upon their tryall the Iury for life and death found them guilty of Mans-slaughter, onely for which they prayed their Clergy which was granted unto them. The Clerk when he came to reade could not reade one word, and the Ordinary was so watcht that he could not helpe him; yet the Iudge in favour of the prisoner (who seem'd a civill man and much pittied) gave him further time (thinking perhaps

that his eyes were dazled, or his heart daunted) willing to save his life; In the meane time the Groom who did not know one letter in the Crosse-Row, more than what he was taught by his fellow while they were together in the Goale did read; and was saved; and the other coming the second time to read could not, and was hanged.

Mich. 7. and 8. Eliz.

AT the end of this Terme one *Brooke alias Cobham* was arraigned in South-wark before the Commissioners of Oyer and Teyminer for Piracy and and Robbery done upon a *Spaniard*, and stood mute and would not directly answer, and the question was moved by the Attorney Generall whether he ought to have Iudgement of *prime fact & durin* this case. And as it seemed to *Saunders* Chiefe Baron Iustice *Browne* and *Dier* their opinion being therein required, that he shall have it: And this by the words and good and reasonable intendement of the Statute of 28. H. 8. Ca. 12. and Iudgement was given by Serjeant *Barus Dyer* fo. 241.

Hillar. 13. Eliz.

A Subject of this Realme being beyond the Seas practised with the Prince, or Governour of the Countrey to invade this Realme, with a great power, and shewed the meanes how and where to doe it but yet there was no invasion after, what Offences there are and how and where they shall be tried, whether the practise there shall be for the death or destruction of the Queene, what Offence this is in the Subject, and where it shall

shall be tried were the Questions: and these Offences are held by the Iustices to be treason. For an invasion with power cannot be but of necessity, it must trench to the destruction or great perill of the person of the Prince, and both offences are triable by the Statute of 35. H. 8. which Statute is still in force notwithstanding the repeale 1. May.

This Case concerned Doctor Story who was afterwards arraigned which makes me set downe the Judgement as an introduction to his arraignment in the terme following.

Pasche 13. Eliz.

DOCTOR Story was arraigned this terme in the Kings Bench upon an Indictment there taken by a Iury of *Meddlesex* for three Cases of Treason Committed at *Anwerpe* in *Brabant* and in the Indictment he was supposed to be an English man which he confessed, but pleaded to the Indictment that he could not answer it, for he was a Subject, and Servant to *King-Phillip of Spayne* and had been for the space of seven yeares, and praid that his plea might be entred and allowed. But the Court would not, but, recorded a *nihil dicit* if he would not otherwise plead, who would say no otherwise, whereupon he had Iudgement of Treason Dyer fo. 300.

This Story I have Inserted as having some relation to the matter in hand, but more to shew the Judgements of God, which though secret and to us unknown, are allwaies just and holy; and rather to be admired with Humility then searched into with Curiosity.

Mich³

Mich, 7. and 8. Eliz.

BY that which had been already said, it doth appeare that there be divers Offences against the Peace tending to the breach thereof, which are here before set down; and many more there be, which for brevity sake I have omitted: which be comprehended briefly under the heads of Treasons, Felonies, and Trespases, or Misdemeanours; for some of which Felonies the Prisoner may by Law have his Clergie (as I have before shewed) and for some others he cannot have the benefit thereof. But because there are so many which may claim that benefit, I will mention those Offences for which the Offender cannot have it, which be these which follow.

First, no woman can have the benefit of Clergie because no woman is in capacity to be a Priest, which men that could read had allowed them, because they possibly might be such, for which consideration that favour was granted unto them.

Howbeit by any Act of Parliament holden at Westminster, in the one and twentieth year of James late King of England, shewing, That whereas by the Lawes of this Realme, the benefit of Clergie was not allowed unto women convicted of Felony, by reason whereof many women did suffer death for small offences. It was enacted; That a
ny

any woman being lawfull convicted by her confession, or by the verdict of twelve men, of or for the felonious taking of any money, Goods or Chattells, above the value of twelve pence, and under the value of ten shillings, or as accessary to any such offence, being no Burglary, nor Robbery, in or neere the High way, nor the felonious taking of any money, Goods or Chattells from the person of any man or woman privily without his or their knowledge, but only such offence as in the like Case, a man might have his Clergy, shall for the first offence be branded and marked in the hand upon the brawn of the left Thumb, with a hot burning Iron, having a Roman T. upon the said Iron, the said marke to be made by the Jaler openly in the Court before the Judge, with such further punishment by imprisonment, whipping or sending to the house of Correction, in such sort and forme, and for so long time (not exceeding one whole yeare) as the Judge or Justices before whom she shall be so convicted, shall in their discretion think meet according to the quality of the offence, and then to be delivered out of Prison for that offence.

Felonies without Clergy.

WHosoever shall receive, relieve or mayntain a Iesuite (being at liberty) and knowing him to be such is a Felon without Clergy.

All such as are convicted of Petty Treason, or as Accessaries before the committing thereof are barred from the benefit thereof.

So are all Convicted of Burglary, and the accessaries before the Felony committed.

AL L Robbers upon the High way, all Cutpur-
ses and Pickpoquets, all stealers of Horses and
Mares before, or accessaries before or after the fact.
All convicted of wilfull Murder by person or o-
therwise, and such as were accessaries before the
fact, which in Law are principalls. All such as
are convicted for burning of Houses, or Barnes
with Corn, and the accessaries before the fact.

The Ravishers of any Woman against her will,
or the unlawfull carnall knowledge of any Wo-
man child under the age of ten yeares, and the abet-
ter of any Ravisher being present, and aiding to
the said Ravishment.

The takers away of any Maid, Widdow or Wife,
having Lands, or being Heire apparant to her An-
cestor by the Statute of 39. *Elix. ca, 9.*

All such men as shall Marry another Wife, the
former being living. And all such women as shall
marry another Husband, except where the Hus-
band or Wife have been absent seven yeares, and
the one not knowing the other to be living, or in
case of divorce, or marriage before yeares of con-
sent Stat. 1 *Jacobi. cap. 11.*

All such as shall stab, strike, or thrust another,
that hath not a weapon drawn, or hath not then
stricken the other, and if the party so stabbed,
stroken or thrust, &c. shall dye thereof, within six
Moneths after, though it cannot be proved, that it
was done of malice forethought, yet being there-
of lawfully convicted, shall suffer death. A wilfull
murderer

murderer without benefit of Clergy, per Statute
Jacobi.

No person convicted for taking away, against
their wills, any Subject in the Counties of Cum-
berland, Westmorland, Northumberland, or the Bi-
shoprick of Durham, and carrying them away to
make a Prey of them, or to be ayding or assisting
thereunto. Or shall burne any stack of Corne
there, or shall be aiding or assisting thereunto, by
the Stat 34 Eliz.

Popish Recusants, or any other Recusants, and
other Sectaries, which by the Statute of 35, Eliz.
are to abjure, if they shall refuse to abjure, or after
abjuration shall not depart the Realme at the time
appointed, or after such departure shall returne
without Licence of the King. For though he
might have the benefit of Clergy for the Felony,
yet not for the contempt, till he purchase his par-
don.

Such Soldiers, Mariners, and all other idle per-
sons wandring as Soldiers or Mariners, which
wander up and down idly and begging.

Such Soldiers or Mariners as have not a law-
full testimoniall from some one Justice of the
Peace neare the place of his Landing, or set not
down the place of his Landing, and the place to
which he is to passe.

Or having a Testimoniall, if they shall wilfully
exceed the time therein limited.

Or if they shall forge or counterfeit any such
Testimoniall, or shall have any such forged
Testimoniall, knowing the same to be forged,

Or being retayned in service, he shall depart
within a year without his Masters Licence—
shall be reputed Felons without the benefit of
Clergy.

So

So are all such as commit the horrible sinne of Buggery, either with mankind or beast,

So are such as are convicted of conjuration, or invocation of an evill spirit for any intent whatsoever.

So are such as the second time practise Witchcraft, &c. thereby to declare where any Treasure may be found.

Or where any Goods lost or stolen may be found.

Or whereby any Goodes or Cattell shall be destroyed or impaired.

Or with intent to provoke any person to love,

Or to the intent to hurt any person in their body though it be not effected, felony without Clergy. Nor any person that is arraigned, convicted and attayned, or refuseth lawfull tryall in a country where he was taken with the manner, &c.—25; H. 8. and 5. Ed 6.

Nor any which being once convicted or condemned of any of the offences prohibited by the Statute of 5 *Elix.* against the forging of evidences and writings, by any of the wayes in the said Statute limited, and shall after such condemnation commit any of the said offences in forme of the Statute expressed.

Nor any person of the age of fourteen yeares, or above calling himselfe an Egyptian, or being in company with them, &c. for the space of one Month 1.2 *Pb. & Ma.*

Nor any person that shall feloniously take the Goods out of any Church or Chappell.

Nor any person which shall robbe any person in a Tent or Booth in any Faire or Market, the owner his Wife, Children, or Servants being within the same Booth or Tent, whether they then
and

and there being shall be sleeping or waking.

Nor any person that shall be lawfully convicted for the Felonious taking away in the day time any money, Goods, or Chattell being of the value of five shillings or upwards in any dwelling house, or out house although there shall be then no person in the said house, &c.

Nor any that shall receive, relieve, &c. any Jesuite, Seminary Priest or other Priest, ordayned or made by any authority derived from the Sea of Rome, being at liberty, and knowing him to be such &c.

Nor any man or woman that upon confession, or by verdict upon Indictment or presentment, shall be convicted of incest, the kinds whereof are specified in the Act of Parliament of the tenth of May 1650.

Nor any man or woman in like manner convicted of Adultery under the Provisoos contained in the same Act.

Nor any person who hath once for any offence had the benefit of his Clergy, and shall after be arraigned of any such offence.

Felonies without Clergy.

ALL such as are convicted upon their contumacy, and refusing to plead to their Indictments, shall be prest to death, and that *hard* and *strong* paine which I have beforementioned.

All such as are indicted of petty Larceny (which I have before defined) are to be whipt on their bare Bodies from their shoulders to the waist, till they be all bloody, and receive such other punishment by Imprisonment, or otherwise as the Court shall think meet.

All

All such Rogues which shall be thought dangerous, and thereupon committed to Prison, and indicted upon the Statute 39. *Eliz.* and thereon convicted, shall be branded in the left shoulder; with an hot burning Iron, of the breadth of an English shilling, with a great Roman R. upon the Iron, and the branding upon the shoulder to be so thoroughly burned, and set upon the skin and flesh, that the Letter R. be seen and remaine for a perpetuall mark upon such a Rogue, during his or her life: And if after such punishment shall offend in begging, &c. contrary to the said Statute, the party so offending, shall be Judged a Felon, and shall suffer as in Cases of Felony without the benefit of Clergy.

In all other Cases of Felony the prisoner may have the benefit of Clergy once but not oftner.

Punishment of Felons and Traitors.

HAVING seen the punishment upon the person of the Offenders, let us in the next places, place, what punishment falls upon their posterity, by reason of any forfeiture which they shall make by reason of their offences, and their convictions thereupon.

In Case of High Treason, the offender being thereof lawfully convicted, shall forfeit all such Lands and Tenements, which he had in his own right in use or possession, at the time of the Treason committed, or at any time since—5. *Ed 6. Ca. 11.*

In Case of Felony, the King shall have the Goods of all Felons as are condemned where-soever they be found; And if they have any freehold, it shall be forthwith seised into the Kings hands,

lands, who shall receive the profits thereof, be the space of a yeare and day, and the Land shall by waste and destroyed, and after the King hath had the yeare day and waste, the Land shall be restored to the Chiefe Lord of the Fee, &c.

But the Jury for life and death being to enquire (if they find the Prisoners guilty of the offence of which they be indicted) what Lands or Tenements, Goods, or Chattels, they had at the time of the offence committed, or at any time since if they do not find that they had any; Then (as some do conceive) there can be no seisure, till such times a Writ of inquiry be awarded to the Sheriffe, by the Oath of good and lawfull men of the County, to find what Lands and Goods he had at the time of the offence committed, or since; which being found and returned, seisure may be made, &c. and in the time before conviction the Prisoner is to have reasonable maintenance out of his Estate, for him and his family, and some say he shall forfeit his Goods from the time of the Attaynder only. And in case of a *felo de se* (where is no conviction by tryall) there is ordinarily a Writ directed to the Sheriffe of the County, to enquire whether the party were *Felo de se*, and if he were, then to enquire what Goods and Chattells he had at the time of his death, which Writ shall issue out of the Upper Bench, and is of this Tenor.

The Keepers of the Liberty of England, &c to the Sheriffe of the County of *Essex* greeting. We command you, that you omit not for any liberty, &c. But that you diligently enquire by the Oath of good and lawfull men of the Body of your Country, whether A. B. late of C. in the County aforesaid did drown himseke, or did any other way feloniously -

ously kill himselfe or not; and if it shall be found that the said A. did wilfully and feloniously drown or kill himselfe, then by the Oaths of good and lawfull men without any delay, you diligently enquire what Goods and Chattells the said A. had in possession or any other to his use had at the time of his death and of the true value thereof. And that what shall be found concerning the premises before you, you do under your Seale, and the Seales of those whom you shall cause to make the said Inquiry, you do certifie unto us in the *Octaves* of *Saint Hillary*, wheresoever we shall be in *England* together with this Writ; That we may further dothereln, as of right by the Law and Custom of *England* is to be done. Witnesse H. R. Or if any person shall come to his or her death by any mischance, whereby any benefit of *Deo dandum* cometh to the Keepers of the Liberty, then it is usuall to send a Writ to the Sherriffe of the County to this effect.

The Keepers, &c. to the Sheriff of the County of S. greeting, We command you that you diligently enquire by the Oathes of good and lawfull men of the body of your County, how and in what manner A. B. late of C. in your County came to his death, whether by misfortune, or by the visitation of God, or otherwise; and if it shall be found that the said A. B. was killed by any misfortune, that then you do enquire of all such things which did move to the death of the said A. and of the true value thereof, and in whose hands they now are. And what shall be found before you concerning the Premises, that you certifie unto us under your seale and the seales of such as you caused to enquire thereof, &c.

Secondly

Secondly he shall loose his blood as well in regard of his Ancestry as of his Posterity, and so his blood being corrupted he hath neither Ancestor, Heir, or Posterity.

And where a man is found guilty of the death of another before the Coroner, the Coroner shall presently go to the house of him that is so found guilty and shall enquire of his Chattels, and his Lands, and his Corn growing thereon, and shall apprise them and deliver them to the Town to answer them before the Justices. And it is said that when a man is found guilty of flying (or as it is called in Law *Fugam fecit*) the Coroner may presently cause the Sheriff to seize the Land into the Kings hand by word without an Inquest, and may cause him also seize all his Chattels and apprise them by record Inquest, and deliver them to the Town to answer for them to the King.

By the Statute of 31. H. 8. The words are. That every offender hereafter lawfully convict of any manner of high Treason by presentment, Confession, verdict, or process of outlawry shall forfeit

26. Hen 8. upon a bill preferred. That all Inheritances might be forfeited for a Treason (so, as by that Act) Lands in taile were forfeited.

But if a Conviction be without verdict, viz. by finding mute, then the Statute of 26. H. 8. doth not extend to it.

Mich 32. H. 8.

A man had issue two Sons, the elder in his life time is attaint of Felony, and dyed, his Father living

living, and after the Father died seised, of Land in Fee, and whether the Land should escheare or not was the question, and it was held by *Browne, Conisby, Molineux and Hales* that the Land shall enure to the younger Son as Heyre to his Father, if the elder Son had no issue alive, but if he had issue alive (because he is inheritable by the Law if there had been no attainder) the land had escheared unto the Lord, and should not goe to the younger Son *Dyer. fo. 48.*

By an Outlawry in Felony, A man shall forfeit all his Lands and Tenements that he holdeth in Fee simple, as well as his Goods and Chattels, but in Trespass not so. For though the non appearance is cause of the Outlawry in both, yet the strength of the Outlawry shall be esteemed according to the heynousnes of the Offence, which is the Principall cause and ground of the proces *3. Ed. 3. 84. Trin. ley fol. 4.*

Trin. 1. Ed. 4. Rot. 3. in the Kings bench.

ONe *John Davis* did strike one in the face with his fist in the great Hall at *Westminster* all the Courts there then sitting, and threatened that he would hang him, if he would give evidence against a Felon who was taken to be arraigned at the *Kings Bench*, for which fact he was there indicted and arraigned, and confessed the Indictment, and was therupon adjudged to perpetuall Imprisonment during his life to forfeit all his Lands and Tenements, and Goods, and his right hand to be cut off at the standard in Cheape and execution was done accordingly *Dyer. fol. 188.*

Mich.

Mich. 3. and 4. Eliz.

It was said by Saunders Chiefe Baron and *u*bidon Justice, that experience was in the time of John Baldwin Chiefe Justice of the Common Bench, and also before in the time of Edward Moraine Chiefe Justice of England that if a man be arraigned of Treason, and stand mute, or will not directly answer to the Crime, that Judgement shall be given against him as a Traytor convict, Dyer. fo. 205.

Quere how this opinion agreeth with the opinion before mentioned, about the Act of Parliament Hen. 3. by which all Lands as well in Fee as in Tayle shall be forfeited, where it is said That if a conviction be without verdict, viz. by standing mute, that Statute doth not extend to it, unde Quære.

And albeit it hath been said that the King's Officer may seise the Goods of a Felon before his attainder and leave them with him upon security given, yet others say, whether he give security or not, that the Officer cannot remove them out of the house till the partie be attainted, and the Felon and his family shall have all things necessary for him and his family so long as he shall be in prison *Stam. pl. Coron. P. 192.*

And in an Appeale of Murder, or other Felony, if the Appellant die, or surcease to follow the Appeal, or shall become non-suit, yet the Felony still continues. And because (in Case of Murder) there is not only an Injury done to him that is slain, but the Peace of the King was broken, the King might proceed *ex officio St. m. pl. Cor. fo. 147.*

12. Eliz.

AN Office of skill and diligence, or an annuity, *consilio impenditudo*, cannot be forfeited upon attainder of Treason, *Finch. ley. 10. 5.*

In Felony the Land which the Felon hath in Fee simple shall be forfeited; but where the person attainted holds in right of his Wife, the King shall have the Issues only during the life of the Husband *Stat. 2. H. 8. ca. 7.*

But for Sodomy, Sorcery, Heresy, or *Felo de se*, Lands or dower shall not be forfeited, nor blood corrupt.

Pasc. 9. Eliz.

IT was moved in the Star Chamber for the attainer that If a man who is *Felo de se* hath a debt upon a Contract, and not by Specialty whether he shall forfeit this to the Queen inter *Cetera bona et Catalla sua*, or not, because that the debtor shall be rebutted of his Law against the Queen. And by the opinion of both the Justices the debt shall not be forfeit *Dyer, 263.*

If a man be indicted that he feloniously stole the Goods of another man, whereas in truth they are the proper Goods of the Indictor, and they are brought into the Court against him and being asked what he saith to the said Goods, to which he disclaimeth, although that afterwards he be acquitted of

of the Felony, yet the King shall have them a confiscate but otherwise if he doe not disclaime them.

The same Law is, where goods be found in a Felons possession, which a disavoweth, and afterwards is attainted of other, and not of them, there the Goods which he disavoweth, are as confiscate to the King: but had he been attainted of the same Goods, they should have been said to be forfeit not confiscate notwithstanding the disavowment.

Church Wardens.

When I promised, and intended to make an Appendix to the former worke, concerning the duty and office of Church wardens, I had not seen some tracts written *de propoſito* concerning the same, whereof having advice since, I had almost resolved to break my word, which I thought better to do then to take upon me to make that mine which indeed was other mens, and also hear the warning which *Hor.* gave to *Celsus*, a great Plagiary in that kind, which was *privatus ut querat opes*, to make use of that which was, his own, lest that should befall him, which befell the Jack-Daw, who trimming himselfe with the fine Feathers of other Birds, and being called to make restitution to the true owners, was left naked, and exposed to contempt, and lorne.

I remember that when the Earle of Essex was in the hight of his greatnesse in Q. Elizabeths time, there was a Book written to Sir John Hayward, a Doctor of Law, and (to give him his due) a man of great knowledge, both in his own profession, and
 V 4 other

other learning, concerning the deposing of *Risbard* the second, and the gaining of the Crown by *H. Duke of Lancaster* (after *Hen 4*) which Booke he very unfortunately (as shortly after it fell out) dedicated to the said Earle, for which Book he was after questioned, and by direction either of the Queen herselfe, or some of her Privy Councell *Master Bacon* (since Lord Chancellor) being of the Queens learned Councell at large, was commanded to consider of the said Book, and see if he could find any Treason in it; He did so and returned answer That he found no Treason, but much Felony in it; for that the Doctor had stolen whole leaves out of *Tacitus*.

I would be loth to be found guilty of that Crime, though I find that many great Clerkes have thought it to be but a Venial sin: *Mr. Crompton*ooke much of *Mr. Lambd* and *Mr. Dalton* out of them both, and the Compiler of the Compleat Justice out of them all, and all upon one Subject.

So that to speak truth, there hath been continually borrowing one of another, to make their designed work, though in severall and divers Methods, and all very usefull.

It must not therefore seem strang, if I have here and there gleaned some things out of them, as they did out of others, as they lay in my way; and upon that score hope that it shall not seem a greater fault in me then it was in those eminently learned men; and the rather, because I have gone away, in which I find not the foot-steps of any going before me; though I deny not but that many of the things are the same which others have set forth in another Methode. and in this individuall matter concerning the Office and duty of Church-wardens, I have so far declined the meddling

ing with those things as are commonly taken to be their main, if not their onely businesse (as the providing and preserving the goods of the Church, making presentments heretofore used at the Ecclesiastical Courts, unlesse it be the vouching of some authority, or resolution in some case heretofore controverted) That I meddle little or nothing with their duty and Office, but as it is interwoven with the businesse of the Constables, whose work it is to preserve the Peace, which (as I said before) is the subject matter of this discourse; under which notion, and in which capacity, you shall find the Church-wardens often engaged, and coupled with the Constables in matters which concern the Peace, and the observation of divers Statute Lawes tending thereunto, as for example,

If any disturb a Minister in his Preaching, or reading the Divine Service, (which is a breach of the Peace and a statute) any of the Constables or Church-wardens may of his own authority apprehend him and bring him to a Justice of the Peace, to be dealt with according to Law.

If a Rogue be brought or offered to the Church-wardens, they must accept him, and looke to him, or forfeit five pounds, and be bound to the good behaviour.

If any person be sent to the Common Goale and have not money or meanes of his owne to defray the Charges of him and his attendants; Then the Constable and Church-wardens of the Place where the offender shall be taken shall make a rate for levying of such money as shall be necessary for the charge, which Assessment being confirmed by

by a Justice of Peace, shall bind the Inhabitants, and if any refuse to pay his rate, the same Justice, or any other may give warrant to take a distresse

When an Assessment is made for maintenance of Soldiers and Mariners; and the parties rated, refuse to pay their rates assessed, the Constable and Church-wardens, and every of them, may levy by distresse and sale of the refusers Goods.

The rate for the maintenance of the Poor Prisoners in the Kings Bench and Marshalsey Hospitals, and Almshouses may be rated by the Constables or Church-wardens, of the Parish, who may take distresse

The money forfeited by unlicensed Alehouses, may be levied by the Constables or Church-wardens of the place by a Justice of Peace his Warrant, and if the money be not paid within three dayes, they sell the Goods, &c.

The money forfeited by such as keep Tipling houses, and lesse measure then they bought, which is twenty shillings, or such as abide tipling in any Winters house, &c. to be levied by the Warrant of a Justice of the Peace by the Constable or church-wardens, and given for the reliefe of the poore.

If any be convicted for being drunk, he is to pay five shillings, to be paid within a week after conviction to the church-wardens, for the use of the poore.

The church-wardens are by their Oath charged to present the offences against the Statute Books, for selling by unlawfull measures; for suffering eipling and drunknesse, for default whereof they are to pay ten shillings to the use of the poore.

If any prophanely sweare and curse (and be questioned for it within twenty daies, he shall forfeit for every time twelve pence to be levied by the Church-wardens to the use of the poor, by the Statute of 21. Jac.

If any shall kill or destroy any Pheasants or Partridges with any Nets or other Engines or devices, in the night time, he shall forfeit for every Pheasant twenty shillings, and for every Partridge ten shillings, the one halfe whereof to the Lord of the place, which if he shall dispence with, the Church-wardens of the place may sue for it and recover it, 13. Stat. 23. Eliz.

If against the Statute of a Carol. Ch. 1. there shall be any assemblies or concourse of people for sports or pastimes on the Lords day, or any Bear bayting or common Playes, or other unlawfull exercises or pastimes, to the prophanation of the day, every person so offending, shall forfeit for every such offence — 3. 8. — d. to the use of the poor, to be levied by the Church-wardens.

If any person fish in any haven, harbour or Creek of the Sea within five miles of the mouth of any bayen or creek of the Sea, with any Nets not allowed by the said Statute, whereby the spawn of fish may be destroyed, the offender shall forfeit the Net and ten shillings for every time, the same to be levied by a Justice of Peace his Warrant to the Constables and Church-wardens of the place.

All estates made by the Clark of the Peace, and the Stewards of Leets upon forfeitures upon Statutes of high wayes, one part ought to be delivered to the high Constables of the hundred, and the other part to the Constables and Church-wardens of the Parish where the defaults were committed, to the end, the high Constables may thereby levy the

the same by distress, and the Constables and Church-wardens may thereby call the high Constables to an accompt, &c. and if they make not a true accompt to the Constable and Church-wardens, they may be compelled unto it by the Church-wardens; And thus to be bestowed by the Church-wardens on the high wayes.

The Constables and Church-wardens of the Parish, are to be at the choosing of the Supervisors of the high wayes, to name and appoint the six dayes set apart for the mending thereof.

And if any such supervisors shall neglect to levy the forfeitures by distress and sale of the defaulters Goods, then the Constables and Church-wardens shall levy the same in such manner as the Surveyors ought to have done, by the Statute of 18. Eliz.

The Church-wardens have by their office equall authority with the Overseers of the Poor to take order (with the consent of two Justices of the Peace) for setting the poore on work, placing them out Apprentices, and relieving them that are impotent, and with consent of two or more Justices of the Peace (of which one to be of the *Quorum*) may set up and use any mystery, Trade, or occupation, only for setting on work and reliefe of the poore of the Parish.

And to set on work the Children of such who shall be thought by them unable to keep their Children; And the Indentures made by the Justices of the Peace, Church-wardens, and Overseers of the Poore, and the binding of them, shall

as in effectuall in Law, as they were of full age and themselves.

the Church-wardens and Overseers of the Poore are to accept of, and look to any Rogue that shall be brought and offered unto them, so be conveyed unto any place, and are as well as the Constable to see he be conveyed accordingly, and upon refusal so to doe to forfeit five pounds.

And if they do refuse to give up their account, and pay the Arrearages to their Successors, they may be committed to the Goale till they do account and pay the money Arreare.

And the money so by them forfeited for not receiving a Rogue, or not taking care to convey him, may be levied upon the Offenders Goods by warrant from two or more Justices of the Peace.

And the money by them forfeited in any other particular, may be levied by the succeeding Church-wardens & Overseers, upon the Offenders Goods by warrant from two Justices of the Peace.

The Church-wardens, the Parson, or Vicar, and the Constables of the place, where any money is given to be continually employed for the binding out of Apprentices, shall have the nomination and placing of such Apprentices, and the guiding and employment of such monies as have been, or shall be given to that end.

And in former times when there were Bishops and Episcopall Government, the Church-wardens with the Minister of the Parish, were within forty daies

dates after Easter to give to the Bishop or his Chan-
 cellor the names of all the persons men and wo-
 men above the age of sixteen yeares, that did not
 receive the Communion at Easter before.
 But now that venerable Function, with which
 Tittle many of the most excellent men both
 for Learning, Piety, and Government of the
 Church held themselves, and were by others just-
 ly honoured, was cast out of this Nation as un-
 christian; there hath onely no care been taken for
 receiving that holy and soule-saving Sacrament,
 or punishing the neglect of that Sacred Ordinance;
 thus among some of those that pretend to have
 new Lights, and by them seem more then all the Re-
 mitive Fathers (who lived in the times next
 after Christi Ascension) or the holy Apostles
 and ever see; it is held to be a degree of su-
 perstition to desire it, and are offended with such
 Pious and Orthodox Divines who administer
 the same with such reverence as becometh
 and is due to a work which conduceth to, and
 much concerneth the salvation of our
 Soules; but what pretences soever those other
 make to new lights, I think I may truly say, a
 pious and religiousman (now with God) said, they
 have light-headed.
 By the ancient common Law the Church-wardens
 were and still are to care and see to, and preserve
 the Goods of the Church; viz. the Church-books,
 Common-cups, and other decent Ornamentes and
 Furniture of the Church, which they do find there
 at their comming into their Office: and if there
 be any lack of those things they are to see and pro-
 vide them, and being there to preserve them, &c.
 and to see the Church repaired; For the taxation
 of which charge, I find that upon a consultation
 among

among the Doctors of the Civill Law to the number of fifteen assembled at Doctors Commons in London it was directed and agreed upon.

That every In-dweller shall for his lands, yearly lively hood or goods onely, or by the best of them and not for all.

That every Out-dweller that occupieth lands or tenements within the Parish; shall be taxed either by himselfe, or by his Bailiff or his servant.

That if the Out-dweller occupy not the land himselfe, then the Farmer, nor the Owner shall be taxed.

That no man shall be taxed for any lands lying out of the Parish, but onely for lands within the Parishes.

And it was by them declared, that these parcels ensuing with their appurtenances are to be accounted Church reparations, and are to be borne not onely by the Parishoners, but also by all those that do occupy any Lands, Tenements, or possessions within that parish where the Church is to be repaired;

Viz.

1. The Walls of the Church, and Church steeple, and Church-yard of Stone and Brick.

2. The Windowes of Stone and Brick, and the bars of Iron and Glasse.

3. The Roofe of Timber, with Lathes, Nails, Ribs, Dags and Bolts of Iron.

4. the covering of Lead, Slate, Tile, or Shingles.

5. The Floor with stone or paving Tile.

6. The doors of Timber, with Locks, Keyes, Ridges, Hooks, and Nails.

7. The Furniture of the Steeple with Staires, Floores, Balls, Wheelles, and Ropes.

8. The Pulpit.

9. The

97. The Pewes and Seates not made by private men.

These following are not properly Church-reparations, but yet are the duties belonging to the Church, and are to be performed rateable by the Inhabitants of the Parish.

1. The Communion Table with the Coverings thereof.

2. The Communion Cups.

3. The Bread and Wine for the Communicants.

4. The Bible and other Books appointed to be in Churches.

5. The washing of the Communion Clothes.

6. The Candles for the Lecture daies and other occasions.

7. The Clerk and Sextons wages.

8. The expences of the Church-wardens and side-men at the visitation.

But how all these charges for reparation of Churches and other Parish Charges shall be raised, there have been so many queries and doubts, that almost in every Parish there have been contests about the same; and among other places in the Parish of *Ward* in the County of *Suffex*, where Sir *Robert Heath* then Lord chiefe Justice of the common Pleas then lived, who advising with the Justices of Assise gave these directions following, which though calculated for the *Meridian* of that place may serve (unless there be some usage and custome to the contrary) for the whole Common wealth of *England*; which were.

That the Taxations of the Poor (which may be a rule for other Assessments too) of any Parish be by Land-scots, according to the quantity and quality

lity of the acres of Land within the Parish, and to have respect in their Taxations to the ability of the Inhabitants as well as to the lands they occupy.

That the lands in the hands of Owners and Farmers at the Rack rent bear this disproportion; viz. That the Owners shall be set 4 d. the acre, and the Farmers at 3 d.

And because there may not be an unequall and partial carriage in the Taxations, but that the same measure may be towards all.

It is directed and advised, that together with the Church-wardens and Over-seers of the Poor, there may be joyned an equall number of Owners and Farmers, Inhabitants of the Parish, to be indifferently chosen by the rest of the Parish, upon whose Consciences and Reputation with their severall Neighbours that shall aid, that there be a charitable respect to the poorer sort of Farmers in making the valuation of their lands according to the good discretion of the Assessors who shall be trusted for the whole Parish.

Concerning the way of levying of Taxes for reparation of Churches, there having been anciently divers provisions made; But because the same by an Ordinance of the Lords and Commons in Parliament, of the ninth of 1647 the same is at large provided for; I think it requisite for the information of such Officers who have not the said Ordinance, to set down the tenor thereof here, as briefly as may be, without omitting any of the materiall parts thereof, which may seem for a generall rule and direction for all Parishes and places within the Common-wealth of *England*, and the Dominion of *Wales*, by which it is ordered as followeth.

That foure, three, two or one substantiall Inhabitant or Inhabitants of every Parish or Chapelry

pelry (having respect to the proportion or greatness thereof) shall be chosen yearly on the Monday or Tuesday in *Easter week* by the Parishioners of every Parish, or the greatest part of them that shall be then Assembled for the choice of Church-wardens, or Collectors of money for Church-dues within every such Parish respectively; or in default thereof every such Parish to forfeit 40 s. to the use of the poore of the Parish, to be recovered, as in the Ordinance is appointed; which Officers are within one moneth next after the choice, to be allowed by two of the next Justices of the Peace to the place.

That the Church-wardens, or Collectors with the Overseers of the poor, shall from time to time make rates & Assessments by taxing every Inhabitant residing and dwelling in the Parish, and every Occupier of Lands, Houses, Tithes, impropriate, Cole-mines, saleable Under-woods; and for raising such competent sums of money as they shall think fit towards the reparation of such Church and Chappell, and providing of Books, and Bread, and Wine for the Sacrament, and repairing the Walls of the Church-walls and burying places thereto belonging; which Church-wardens shall within foure dayes after the end of the yeer, and other Church-wardens nominated, yeeld up a perfect account to the succeeding Church-wardens, and such Justices of the Peace as aforesaid, of all moneys by them received, or assessed, and not received at all, & other things concerning the said office, upon pain that every one defaulting shall forfeit 20 s. to the use of the poor of the Parish.

That all Rates and Taxes made by the Church-wardens according to the custome of the said Parish,

ish; appointed by this ordinance to be done since the first of *May*, 1641. being confirmed by two Iustices of the Peace, shall be as effectuell in Law as if they had been done by this ordinance.

That it shall be lawfull for the present and subsequent Church-wardens (their rates being confirmed as aforesaid) to levy all sums of money and arrerages of such as shall refuse or neglect to pay their rateable parts and the forfeitures before mentioned, by distresse and sale of the offenders goods.

And all monies which shall be behind upon any Church-wardens account, for the repairing of any such Church or Chappell, or other things aforesaid, and the sum of two shillings towards the expence in levying the same, rendring to the parties the over-plus.

And in default of such distresse, it shall be lawfull for any two such Iustices to commit such refusers to the Common Goale of the County, City, or Town Corporate, there to remain without Baile or main-prize, untill payment thereof.

And to commit to prison such Church-wardens as shall refuse to account, till they shall make their account, and paid so much as shall be remaining in his or their hands; provided that the party may complain thereof at the quarter Sessions, where the Iustices may make such order as to them shall seem good, by which all the parties, shall be concluded.

And if any Parish extend into two Counties, or any part thereof lye within any Liberty or place Corporate, then the Iustices of the Peace and other Officers shall intermeddle onely with so much as lyeth within their respective Counties and Liberties; and no further, concerning the execu-

tion of this Ordinance concerning any of the Premises.

That if any Action be brought against any person for taking any distresse or making any sale thereof, it shall be lawfull for such Officer to plead the generall issue, and give any speciall matter in evidence.

And that if the Verdict shall passe with the Defendant or Defendants, or the Plaintiff become nonsuit, or suffer any discontinuance thereof, then in ev.ry such case, the Iudge or Iudges before whom the said matter shall be tryed, shall by force of this Ordinance allow to the Defendant or Defendants his or their double costs, which he or they have suffered wrongfully in defence of the said suit.

And if the said Church-wardens or Collectors shall be negligent in performing their duties, upon complaint or information thereof made to the two next Iustices or one of them, the said Iustices, or one of them shall or may in their owne persons view the said Churches or Chappells, or appoint the minister or some other of the Parishners, to certifie them or one of them what reparations shall be needfull, and thereupon they or one of them shall by a Warrant under their hands and seals, to the Church-wardens, order and direct what reparations shall be done, and limit a time for the doing thereof,

And if their order be not performed, they shall bind over the said Church-wardens or Collectors to the next quarter Sessions of the Peace; and if their negligence be proved, they shall be severally fined, so it be not above 40 s. upon any one of them, and the Offender to be committed untill the fine be paid, which is to be disposed of for the use of the poor of the Parish.

Provided

Provided that the Parishoners of any Parish shall not be charged with the repairing of any Chancell, or any particular Ile in the Church, which by prescription or custome have been used to be repaired by the Parsons, Vicars, Impropriators, or all other persons politick or corporate, which have formerly been lyable to the reparations of all or any part of such Church, Chappell, or Ile shall still be lyable to the same; & for their negligence therein shall be ordered by the two next Justices, or may be presented or indicted by the Church-wardens, or any others at the next Sessions of the Peace, where the offender shall be proceeded against, as the Church-wardens should be proceeded against for their negligence by this Ordinance.

And where any Church or Chappell hath any Lands or yeerly Rents, &c. given to the repairing of Churches or Chappells, the *Church-wardens* or Collectors as aforesaid, shall be from thenceforth receivers of the said Rents, &c. provided, that this Ordinance. as to repairing of Churches, shall not extend to Churches, or Chappells, totally ruined by these last Warrs, extremity of age, or other Casualties.

And that all Offences against this Ordinance, shall and may be enquired, heard, and determined before the Justices of Assise, of *Over and Terminer* or Goale delivery, or before the Justices of the Peace, of any County, City, or Town, Corporate where the offence shall be committed.

And that all and every Parish Clerck, and Sexton, within any Parish shall have their due Fees from the severall Parishes, to be ordered and recovered, by warrant from the Iustices in such manner as the rates made for *Church wardens* are ordered to be levied. And that they be elected, and chosen in

such manner as hath been formerly accustomed.

Hillar. 16. Jac. in the Kings Bench.

IT was holden that a *Church-warden* by the *Common Law* may maintain an action upon the case for defacing a monument in the *Church*. *Godb. rep. fo. 179.*

By the act made for suppressing profane swearing and cursing. It is enacted, That it shall and may be lawfull to and for any *Constable*, *Heauborough*, *Church-warden*, or over-seeer of the poore, to apprehend or cause to be apprehended any person offending against the act.

By the Statute, 2. *Jac. Ca. 4.* the warrants made for the levying of 12 d. for negligent comers to Church, shall be directed to the *Church-wardens*.

And for the levying of 10 s. forfeited by the Statute 1. *Jac.* for suffering tipling, &c. to the *Constable* or *Church wardens*.

And for the levying of 20 s. for breaking the assise of bread &c by the Statute of 1. *Jac.*

And for the levying of 20 s. for selling drink without licence by the Statute of 3. *Carol.*

And for levying 3 s. — 4 d. for tipling in an Alehouse by the Statute of 1. *Jac.*

And for punishing abuses on the Lords day by the Act of 1. *car.*

By

By the Statute of 43. Eliz. saith, that the Church-wardens and over-seers of the poore shall put out children of poore people to be Apprentices, and if they see cause, they may give money with them.

By the Ordinance the 6. of Aprill 1644. the Church-wardens of the place where the offence is committed, are made capable as well as the Constables to seize upon such Goods as shall be forfeited for profaning the Sabbath, and for suppressing and burning of all Books as have been or shall be written against the morality of the fourth Commandment.

THus by all that hath been hitherto said, you may see wherein there is a Transgression of the Law, by the breach and disturbance of the Peace of the Common-Wealth, and the punishment of such transgressions. And all this while we doe but shew the strength and rigour thereof, without any mixture or composition of mercy: But as not to punish some were to encourage Malefactors, and evill disposed persons, in hope of Impunity to commit enormous Offences against God and man, so to punish all Offenders according to the letter of the Law, were severity in the fourth degree like poyson, and become cruelty it selfe.

The Kingly Prophet David (a man after Gods own heart) would have his Song of two parts; of Judgement, to punish where he should find a continued perversnesse, in the will;

of Mercy, to pardon where there was hope of amendment in time to come; there being also divers circumstances which may make the same Offence Veniall or Mortall, as sins are distinguished by some Divines.

And it was the Method which Almighty God (who is the God as well of mercy as of Justice) used with, and towards his own people that had transgressed his Lawes, and broken his holy Commandements and Ordinances, when he had threatned the Israelites, Hos. 11. verse 6. That the Sword should abide in their Cities, consume their branches and devour them because of their own Counsels (which was his Judgement.) In the 14 Chap. verse 5. he saith, he will be as the dew unto Israel, and he shall grow as the Lilly; and verse 6. His branches shall spread, and his beauty shall be as the Olive Tree, &c. which was his Mercy: and in the 4. of Amos, God tells the Israelites what punishments he hath, and would inflict upon them, for their oppression and other sins (there is his Justice) and Chap. 9. verse 11. In that day (saith he) I will raise up the Tabernacle of David which is fallen, (there is his Mercy) and some Divines hold, that if one of Gods holy Attributes can be greater then another (he being Mercy and Justice in the Abstract) it is his Mercy that bath
the

the Prerogative and Preheminence.

And so it should be (by Gods own example) with Princes who are his Vicegerents, and such as have potestatem vitæ, & necis, they should mingle mercy with justice; for in so doing they shall be as much feared, and much more beloved. Mitius imperanti (saith one) melius paretur, and another thus, Sicut ignis est ut urat, & lucem prebeat; sic Regis est ut benefaciat & puniat: (id est) as it is the property of fire to burn and give light, so it is of a Prince to do good, (there is mercy) and to punish (there is justice of judgement.)

The result of all which is, that there is a necessary conveniency, or a convenient necessity (chose you whether) that mercy should be as well sometimes shewed, as justice executed; Lawes being made for the terror of many, that few might be punished. And it was observed, that Hen. 7. King of England, who cut of covetousnesse did use to take advantage of the breach of all statute Lawes which were penall, and would bring him in mony, was branded with the mark of a cruel King; not remembering that, Ditate, non ditescere, Regis est and as the Poet saith.

Si quoties peccant homines sua fulmina mittat

Jupiter, exiguo tempore inermis erit.

Having

Having therefore all this while spoken of Offences and Punishments, it will now (the Promises granted) be orderly and seasonable (according to the Method of that learned Judge, of whose labours I confesse to have made much use in this Collection) to speake somewhat of Pardons.

Of which some are generall, and some particular, some absolute and totall; as where the King doth wholly remit and pardon the Offender (as it is said in another case) both à Culpa & poena, and doth not onely spare the life, and all the Estate which was forfeited upon the attainder; but is pleased by authority of his Parliament (without which it cannot be done) that the corruption of the Offenders blood shall also be taken away, so that he shall stand as rectus in curia, to all intents and purposes as if he had never offended, which the Latines call condonatio, a free and full pardon, and in the Language of the Law is called perdonatio.

And by this authority of Parliament, there may be not onely a restitution in blood to make his Heire capable to inherit from himselfe, or any of his collaterall or lineall Ancestors, but there may be a restitution to Honours, Dignities, and what ever was lost by the attainder.

There

There are also some pardons partiall and conditionall, as where there is something annexed therunto by way of qualification; as where an offender hath his life, &c. pardoned, yet ordered to continue in prison during the Kings pleasure (which is understood to be for his life) or otherwise, or banished the Kingdome, or to be perpetually bound to his good abearing, and is such a qualification of the Pardon, as if the Offender break his condition, he may forfeit his Pardon; as Shimei did, who lost the benefit of his Pardon given unto him by King David, by going out of the City of Jerusalem, to which he was confined by King Salomon, who put him to death, 1 Reg. 2. chap.

And albeit I do not for the present remember but one President which was 3. H. 7. of the taking of such a forfeiture by any King of England, yet the putting to death of Sir Walter Raleigh was not far from the case, For albeit he had no formall or legall Pardon for the Offence for which he was convicted; yet some wise men thought, that the Kings Commission to go to Sea with a Fleet under his command was tant amount, and that it was a hard point of Justice to execute him. For I find in Stamp. Pleas of the Crown, 22. Ed. 3. That where a man was found guilty of Felony shewed by a Charter of the King, that did

not contain any Pardon, he onely shewed retain-
ed him to go into Gasconie, and it was allowed.

Sir Edward Cook in his Book of the Pleas
of the Crown, and the Chapter of Pardons, speak-
ing of generall Pardons granted in Parlia-
ment, saith, that generall Pardons in those
daies in which he wrote; and I may add
in these times in which we live, generall Par-
dons had so many qualifications and excepti-
ons of Offences and things, and of persons also,
that the Court of Iudicatur (where any man
should be impleaded for any Offence for which
he was punishable either by paines of death cor-
porall, or pecuniary) cannot take notice of them,
neither can the party take benefit or advantage
thereof unlesse he plead it: And for that (as
he saith) it may concern the safety and quiet
of many a Subject, he was pleased to expresse
the form of the pleading of a generall pardon in
Latine; which because all Pleadings are now
to be in the English Tongue, I thought it
worth my Labour for the good of others (who
may have occasion to make use thereof) to tran-
slate the same into English, having for my war-
rant that great Master of the Law, and the
learned Judge Stamford, who have in their
Books translated whole Acts of Parliament
for help of the Readers: and thus it is.

And the said *A.* cometh by *B.* his Attorney (or in his proper person) and saith, that our Sovereign Lord *James* the King, ought not now the said *A.* for the cause aforesaid to impeach or molest; For he saith, that by a certain Act in Parliament of our said Lord the King, that now is held, at *Westminster* in the County of *Middlesex*, the ninth day of *February*, in the seventh year of his Raig, among other things it is enacted and established by the authority of the same Parliament; that all and singular the Subjects of our said Lord the King, as well spirituall as temporall of this Kingdome of *England*, *Wales*, the Isles of *Jersey* and *Guernsey*, and the Town of *Berwick*, their Heirs, Successors, Executors, and Administrators, and every of them, and all and every bodies any way corporated, Cities Burroughs, Counties, Riding, Hundred, Lathe, Rape, Wapentake, Town, Village, Hamlet, and Tithing, and every of them, and the Successor and Successors of them and every of them, by authority of the said Parliament should be acquitted, pardoned, released, and discharged against our said Lord the King, his Heires and successors and every of them, of all Treasons, Felonies, Offences, Contempts, Trespasses, Entries, Wrongs, Deceits, ill Behaviours, Forfeitures, Penalties, and sums of money, paines of death, paines corporall, and pecuniary, and generally of all other things, causes complaints, Suits, Iudgements, and Executions in the aforesaid Act not excepted, nor fore-prized, which by our said Lord the King any way or by any meanes must be pardoned before, and untill the ninth day of *November* then last past, before the making of the Act aforesaid, to every or any of his Subjects, bodies Corporate, City, Burough, County, Riding, Hundred, Lathe, Rape, Wapentake, Town

Town, Village, & Tithing, or of any others, as in the said Act is more at large contained. And the said *N.* saith, that the offence aforesaid objected unto him is not in the said Act excepted nor fore-prized; And that he is, and at the time of the publishing of the said Act, was a Subject and Leige of our said Lord the King that now is, and born under his obedience; that is to say, at *westminster*, aforesaid, and that he is not any person in the Act aforesaid excepted, nor fore-prized; And this he is ready to verifie; whereupon he doth not conceive that our said Sovereigne Lord the King that now is, for the cause aforesaid will impeach or molest him; And thereupon prayeth Iudgement: And that he from the Premisses aforesaid may be discharged, and that the generall Pardon aforesaid may be unto him allowed.

In the penning of which plea, it is to be observed.

1. That the whole Act must be recited totidem verbis
2. That the party must be at the time of the Publication of the Act under the allegiance of the King, &c.
3. That he is not any person in the said Act excepted.

The learned *Stamford* in his Pleas of the Crown lib. 2. ca 35. saith, That the pardon of the King is a barre to an Indictment, which (saith he) the King ought sometimes to grant to the offender, where there is hope of amendment, and where he may grant it without violation of his Oath, which he made at his Coronation, which among other things (saith *Bracton*) is to command in all Iudgements

ments equity and mercy to be done, that by his mercy the mercifull God may be gracious unto him, and by his Iustice all men may rejoyce. For a King (as he saith after) ought not only to be wise, but also mercifull, that with his wisdom he may be mercifully just.

But because in times past, many procured pardons for very heynous Crimes, which were not truly set down or specified in the Charter, and upon false suggestion divers pardons were granted contrary to the Law, divers Statutes were made for redresse of such deceits, as 2. & 4. Ed. 5. & 14. Ed. 3. cited by Iudge Stamford loco citato. fol. 190. & 101. where he speaks of pardons granted by the King with a *non obstante aliquo statuto actu*, &c. which *non obstante* (saith he) takes away not only the force of those Statutes which limited the Kings power in granting them, as the Statute of Northampton, &c. But all other Statutes in which that clause of *non obstante* shall be put, And that therefore it behooved Princes, well and wisely to consider the suit and suggestion which is made unto them to grant a pardon, and to see lest by any clause or word contained in their Charter they be deceived. And that the King ought so to do Bracton points out two Statutes, the one in 27. Ed. 3. the other in 13. Ri. 2. whereof the first is.

Forasmuch as our Lord the King hath oftentimes granted Charters of Pardon for Felonies upon fayned suggestions which were not true, by reason whereof many evils have ensued, which to eschew, it is agreed and assented

assented to by our Lord the King and all his said Councell (his Parliament) that from henceforth every Charter of pardon for Felony which shall be granted at the suggestion of any man, the suggestion and the name of him that maketh it, shall be comprised in the same Charter, and if it shall be afterwards found, that the suggestion was not true, the Charter shall be disallowed and null.

That of R. 2. was of this tenor; No pardon shall be allowed before any Iustice for murder, or the death of any man slain by a waite, assault or malice prepenfed. Treason or rape; unless the said offences be specified in the said Charter. And if it by inquest of the visenage, it be found that the party was murdered or slaine by a waite, &c.

That then the Charter shall be disallowed.

And gives this note. That the Charter of pardon ought to agree with the Indictment in name, Sir-name and addition, to the end and intent that he may be intended to be the same person that was indicted, otherwise it is not allowable though in some speciall case upon an appeal it hath been allowed, but regularly not.

Ed in 25. of his Raigne granted a pardon to Jeffrey the sonne of *Warium*, which I thought good also to translate, out of the Latine, as Sir Ed. Cooke hath set it down in the third part of his Institutes, in the title of Pardon.

Edward

Edward by the grace of God King of England, Lord of Ireland; and Duke of Aquitain.

To all his Bayliffs and faithfull people
to whom these present Letters shall
come greeting.

K Now ye that for the good service which Jeffrey the sonne of Warnum hath done in the parts of Scotland, we have pardoned unto the said Jeffrey the suit of our peace which belonges to us of homicides, Robberies, Thefts, breaking of houses, Felonies, and other trespasses against our peace in this our Kingdome done whereof he stands indicted: And also the Uttery if any be against him for that cause. And we do grant unto him our firme peace; So that he do stand right in our Court, if any man have any thing to say against him for the homicides, Robberies, Thefts, breakings, Felonies, and trespasses aforesaid.

In witnesse whereof &c.

Whereby it appeares that the King pardoned only his suit of Peace which belonged to him concerning the said offences; but if any man brought an Appeale against him for any of these offences, he could not pardon it.

For as I have before mentioned in the Office of a Gaoler ; Though the Queen pardoned Nicholls for the killing of Cholmley, and his Wife commencing an Appeale against him ; and he thereupon detained in Prison, and the Goaler letting him voluntarily go out, so that he escaped, Mr. Plowdens opinion was, that it was Felony in the Goaler, notwithstanding the pardon ; which is no plea to the Appeale, upon which he may be put to death ; notwithstanding the pardon: *Stamf. Pl. Coron. lib. 2. fol. 104.* And the reason is, That by the ancient and constant rule of Law, the King cannot extend his grace to the wrong and damage of another : for that which is another mans, He cannot give away. *Bracton lib. fol. 132.*

And in the same Chapter of Pardon, towards the conclusion he saith, *Nonsolum sapiens debet esse Rex. sed & misericors, ut cum sapientia misericordiae sit justus : & licet tutius sit reddere rationem misericordiae quam Judicii, tamen tutissimum est palpebras ejus ita procedere pressus juos, ut judicium suum non vacillet per imprudentiam, nec misericordia decipias per incircumspectionem.*

In English thus.

The King ought not onely to be wise, but also mercifull, that with his wisdom he may be mercifully just; and though it be safer to give an accompt of his mercy then his Judgement, yet it is most safe, that his eyes so governe his wayes that his Judgement stagger not by want
of

of providence, nor his mercy deceived by in-
circumspection.

Nam cum indulget Judex indigno, ad prolapsionis
contagium provocat universos: sic ergo misereatur indig-
no, ut semper homini condeat, And speaking of the
power of Kings in this matter of pardon; Temperet
natur (hex) potentiam suam legibus, que frantum
potentie sua sunt, ut secundum leges vivat, quia hoc
loquitur Lex humana, ut leges ligent latorem, (i. e.)
Let therefore the King so temper his power with
his Lawes, which are a Bridle to his power, that
he may live according to them. For humane
Law hath ordained that the Law should bind the
Law-giver.

Ernell came into the Kings Bench and deman-
ded the opinion of the Justices in this Case. One is
indicted of Felony by the name of John Eton
yeoman, and the King hath pardoned him by the
name of John Eton Gentleman all manner of Fel-
onies. If this pardon may be pleaded, with aver-
ment to say, That the said John Eton Yeoman and
the said John Eton Gentleman, are one and the same
person, and they said that the pardon was good, for
at the time of the Indictment he might be a Yeoman
and after might be made a gentleman by the King,
or by reason of his Office 20. H. 7. Kel. rep. fo. 58.

In the Kings Bench two were Outlawed upon an
Appeale, and purchased their Charter of pardon,
and had a scire facias against the Plaintiff in the
Appeale, and note that the pardon did not agree
with the Indictment in the additions. For the words
were Petronianus, remotionus, relaxamus, with Wilhelmo
Bellingham de London Serjeant, Laurencio Belling-
ham nuper de London Yeoman omnia & anni mola

Delagaria prefat versus Willibelmum & Laurencium seu versus eorum alterum promulgatur which Charter in the premisses *scil.* the words of Pardon are joynt where it should have been *Perdonamus &c. W.B. & L.B. & eorum alteri &c.* because that every Felony is severall and for these severall contempts, it is requisite to have severall pardons, and although the sequent be *versus ipsos, seu eorum alterum* this makes not the pardon severall, and for this Cause the Justices were in doubt and sent for Baker the Kings Attorney, who went to the Common Bench and desired the advice of the Justices there, who were in divers opinions. But at last the Justices of the Kings Bench caused precedents to be searched out, and the pardon was allowed.

Of Pardons.

Pardon is a French word, signifying as much as *pax, venia, gratia*, and is used for the remitting or forgiving of a Felonious or other offence against the King. and it is two fold. One *ex gratia Regis* the other by course of Law; *P. Stamf. 4th Cor. fo. 47.*

Pardon ex gratia Regis, is that which the King in some speciall regard of the person, or other Circumstance sheweth upon his absolute prerogative or power. Pardon by course of Law, is that which the Law in equity affordeth for a light offence, as homicide Casuall &c. *West. part 2. Symbol. Tn. Indictments sect. 46.*

If a man be Outlawed by process before he appeare, no Charter of Pardon shall be granted, except the Chancellor be certified, that he which

is Outlawed hath yeelded himselfe to prison before the Justices of the Court from whence the exegent was awarded 5. Ed. 3. 12.

Trin. 41. Eliz. in the Kings Bench.

IN an Appeale between *Strugborough* and *Biggins* the Defendant was found guilty of *Manslaughter* and the question was, whether the Queen might pardon the burning in the hand. And it was objected that the Appeale is the suit of the party, and by the Statute of 4. Hen. 7. Cap. 13. the burning of the hand is parcell of the punishment; and that the Queen could not pardon it, but upon conference had with divers other Justices that the King might pardon the burning in the hand, for the reasons in *Sir Edward Cooks* 5. Report fol. 50. specified, to which for brevity I referre the reader.

Pardons.

IT is murder when a malice of prepened killeth openly, or secretly, so that he liveth in the Realme under the Kings protection, whereof if a man be indicted at this time, a pardon of all Felonies will not serve the turne, by the second Statute 13. Ri. 2. Ca. 1.

Trin. 18. Carol.

Rickley was indicted at *Durham* for murder, and afterwards the Indictment was removed into the Kings Bench, where he pleaded his pardon, which

pardon had these words in it, *viz. Homitudinum, feloniam, feloniam interfectionem, necem, &c. seu quocunque alio modo ad mortem deveniret, & nota, that there was a non obstante in the pardon of any statute, made to the contrary, and whether those words in the pardon were sufficient to pardon murder, was the question. Hales for the prisoner said, that the pardon was sufficient, to pardon murder; and in his argument considered, whether murder were pardonable by the King, at the Common-law, or not, and argued that it was, the King was interested in the suit, and by the same reason he may pardon it *Shaffae contra* that the King could not, the Statute of 13. Ri. 2. binds the King in point of Justice, and therefore the King could not dispence with it, wherefore he prayed that the pardon might not be allowed. — whereof the Court took time to Consider.*

If a man be attainted of Felony, and the King pardon all Felonies, this is not good, because in the Charter there is no pardon of the Attainder 9 Ed. 4. fo. 28. & Tu. Coron. P. 124. T. 19. Ed. 3. where the Case was, That one abjured the Realm for the death of a man, and was brought to the Barr and pleaded the Kings Charter of pardon, and because there was no mention made of the abjuration it was disallowed, *Stamford Pl. Coron. fol. 102.*

And if the King pardon the Attainder and Execution, yet it shall be disallowed, because in the Charter it is not contained that the King pardoned the Felony. *ibidem.*

If the King pardon 2. 3. or more men of all Felonies by them or any of them done, It is not good, because

because the Felony is said to be all severall.

If the King grant to one that he shall be quite of the escape of Prisoners out of his prison being there for Felony or Treason, yet this shall not discharge him for a voluntary escape, but only for a negligent: For the King cannot licence a man to Commit Felony, but to restraine men from doing it—*ibidem*.

Of a generall pardon granted by Act of Parliament, every prisoner shall have the benefit without pleading it. For the Court giveth him the benefit thereof, though he have waived the benefit of the Act of Parliament. But this is to be understood where the Act is generall without any exception, *3. H. 7. c. 13.*

A pardon granted by the Kings Charter, the party ought not onely to plead it, but ought also to shew it *sub pre. sigilli* and to bring with him his Writ of allowance testifying that he had found surety according to the statute *ibi*.

3. H. 7. c. 6. A prisoner upon an Utlawry pleaded his pardon from Ed. 4. without shewing any Writ of allowance, or that he had found surety &c. & for that it appeared to the Justices that since his pardon he was Indicted of a battery and thereby had broken the Peace, the Charter of pardon was disallowed *idem. fol. 104.*

Pardon of a Goaler for escapes of Felony, and Treason, is not good for voluntary escapes, *Lambert. 362.*

Pardon must agree with the Indictment in name and addition of the partie, and nature of the offence, for a pardon for all Felonies is not good for petty Treason, murder nor one attainted of Felony, *Lambert. 561.*

Pardon of murder, the death of a man slayne upon a waite, assault or malice drepensed, of Treason, or Rape of a woman shal not be allowed, but where the same murder, death of a man slayne by a waite, assault or malice prepensed, Treason or Rape be specified in the Charter, 13. R. 2. *Finch ley fo. 78.*

Where a blow is given the first day of *May*, and the King pardons him the second day of *May* all felonies and misdemeanours, the party stricken dyes the 3. day of *May*, although such an Act be not Felony till after the pardon yet the Felony is pardoned, in that the misdemeanour is pardoned, and because all things pursuant are also pardoned, 13. *Elix. Finch ley. fo. 4.*

The King pardons the making of a Bridge. This pardon is good only for the fine, not for the making. For he shall make the Bridge nevertheless. For the Kings Subjects have interest therein 37. H. 6. *Finch ley fo. 22.*

He that hath a pardon from the King must within three months find sureties for his good abearing otherwise it is void 10. *Ed. 3. ca. 3. Finch. fo. 68.*

A Pardon for Felony granted to a man, in any other Case but where the King may do it by his Oath shall be void, 14. *Ed. 3. ca. 15. Finch ley ibidem.*

In pardon of Felony, the suggestion it selfe, and the name of him that made the suggestion must be comprised in the Charter, and if the suggestion

prove

prove not true the Charter it shall not be disallow.
ed. 27. Ed 3 ca. 2.

Pasch. 14. Eliz.

Cobham alias Brooke before the last generall pardon was for piracy condemned to suffer the punishment of *penis fort et dure* but not put in Execution, and by the generall pardon all contempts are pardoned, paines and Executions, &c. but all piracies are excepted, it was moved by the *Queens* Attorney generall, whether he might not be newly impeached and arraigned, for the foresaid piracy, or might be indicted *de novo* for another piracy or Robbery upon the Sea Committed at the same time or not. Concerning the first point the Justices, and the *Queens* Councell were in divers opinions, by reason of the Judgement, and punishment and the Execution thereof, in which no attainder or Conviction of the offence is mentioned, but for the other point, the Major part was that it is good enough to indict him, and put him to answer. *Dyer* fo. 308.

Cuddington brought an Action of the Case against *Wilkins* for calling him Theefe the Defendant justified, because before he had stolne somewhat, the Plaintiff replied that since the supposed Felony the generall pardon in the seventh year of the King was made, and makes the usuall averment to bring himselfe within the pardon, whereupon the Defendant demurs, and upon the authorities mentioned in the report, it was adjudged for the Plaintiff, for that the Felony was by the pardon extinct.

For the Kings pardon doth not only clear the offence, but all the dependences, penalties, and disabilities

bilities incident unto it, and it was said, that he could no more be called thief in the present tense then to say that a man hath the pox or is a villaine after he is cured or manumifed *Hob. rep. fo. 81.*

Much more might be said upon this Subject, but *rebus sic Stantibus* I shall say no more, but onely set downe the rule which is found in *Bracton, fol. 132.*

Non potest Rex gratiam facere cum injuria & damno aliorum quod autem alienum est, dare non potest super suam gratiam (i e) the King cannot pardon, or shew his grace with wrong or damage to others, for what is another mans he cannot give away by his grace or pardon.

And now having according to my mediocrity finished that which at the request of some friends at the first not without some reluctancy (being conscious of mine owne disability) I let go abroad, and having purged it of some errors which escaped in the former imptression by reason of my absence: I wish that such as it is, it may bring the fruit and benefit I intended thereby, as should stand in need thereof.

I conclude all with two hymnes of the Church which I hope no discreet man will think to be any rag of Popery.

Gloria in excelsis deo, pax in terris & benivolentia erga homines.

and

Da pacem Domine in diebus nostris.

To which prayer let every honest and godly man say=Amen.

If a Parker or Forester kill a malefactor in his park or Forest that will not yeeld, it is not Felony.

To kill a man who attempts to rob another upon the High way, or goes about to burn a mans house although he burn it not, whereupon he comes forth and kills any of them which make such attempt, it is not Felony.

I find in my Lord Dyers Reports fo. 224. y. Eliz. that at the Goale delivery at Newgate at the end of the Term, that one was indicted that *vi & armis contra B. in via Regia ibidem 40 s. in pecunijs numeratis &c. felonice cepit a persona l. S. & habuit liberum in hoc casu, eo quod non est Robberia*, if the person were not put in feare, as by assault, and violence.

How this practise agreed with the Law elsewhere desired I understand not, for it is very improbable (at least) how *vi & armis* (which implies assault, and violence) a man can have his money taken from his person, and not be put in feare. And if it be not Robbery, what is it.

Sure I am that in Haymons Case who did neither with any Felonious intent, assault his tenant (from whom he was charged to take the purse) nor could put him in feare, it was made Robbery. But the man had a good estate, which was indeed the Felon as Butler who was in Hen. 8. time Lord of Sudely Castle in Gloster shire, and of goodly possessions there, being arrested for Treason, when he was on the top of the hill above his house looked back upon it said *Oh Sudely*, Thou art the Traitor not I.

If

If a man be indicted as accessory to a Felony, before the Principall be convict he ought not to be arraigned and so adjudged by the whole Court *Trin.* 32. *Elix.* That if there be principall and accessory, and the principall is pardoned, or had his Clergy the accessory cannot be arraigned for the *maxime* in the Law, is *ubi nullum factum ibi fortia nulla, & ubi non est principalis non potest esse accessarius*, and no man can be said to be a principall till he be proved and judged by Law, and this ought to be by Judgement, or confession; or by Outlawry Co. 4. part. fo. 43.

If an offence which is murder at the Common Law be made High Treason no appeale lieth thereof, because murder being the lesse offence is drowned and is punishable as high Treason, where no appeale lieth 33. H.8 Dyer. 50.

A woman with Child of a live infant (not *prigiment enserat*) shall have their tryall by a Jury of women, for one time, and for one time and no more, Execution shall be respited, 22 *Aff. Pla.* 71.

Treason and Misprissions of Treasons in *wales* or the marches thereof or within the Realme where the Kings Writ doth not run, shall be presented and tried in the same County by Commission of Oyer and Terminer 32. H.8. ca. 4.

He that becomes a Lunatick after his arrainder Conviction, or Confession of high Treason, shall nevertheles be executed.

Indictment of death, or appeale of murder, and the triall thereof may be in the County where the death

death is although the stroke or poison, be given in another County, and the accessory in one County to a murder or Felony done in another, may be indicted and tried in the County where he is accessory 2. *Ed. 6. ca. 24.*

He that is acquitted upon an Indictment of murder or man-slaughter shall not go at large untill the yeare and day be past within which time appeal may be sued (if his Clergy was not had before.) 3. *H. 7. ca. 1.*

Trin. 43. Eliz.

IN this Teame all the Iustices of *England* met together to Consider of the Statute of Captains and Souldiers. For divers Souldiers being prest and going toward *Ireland* to serve against the Rebels, and before they served in the Warrs did run away, and according to the resolution then had were attaint and hanged. *Co. 6. part. fo. 27.*

If certain men assault *I. D.* to kill him, and *I. S.* who had no malice unto him, but being in their Company and seeing them fighting takes part with one of them and strikes *I. D.* that he die, it is but Chance-medley in *I. S.*

Theft-boote is not when a man takes back his goods which were taken from him; but properly when a man takes his goods from a Theefe to favour and maintrain him, the punishment whereof is ransome and imprisonment but not of life or member 3. *Ed. Fitz. Cor. 373. Finch ley fo. 30.*

If

If an exigent be awarded upon an Indictment, and one come and saith, that he hath the same name as he against whom the proces is awarded upon the Indictment, and prayes that the Kings Attorney may put a diversity of the names &c. now this shall not be done, for this will change the Indictment, for that the proces ought to be made according to the Indictment. And if he be grieved by the processe he must sue the Writ *de Identitate nominis* and shall have no other remedy, and he may have this Writ directed to the Iustices of the Peace, if they make processe of Outlawry upon Indictments presented before them, and also to the Iustices of the Goale delivery as appeares by the register. fo. 195. & 196. Fitz. nat. br. fo. 268.

It was agreed by the Court, that a man shall not have a writ de Identitate nominis where he hath two Christian names but it alwayes lies in Sir names.

By Briton, those persons shall be burned which Feloniously burne other mens Corne, or other mens houses, and Sorcerers and Sodamites and Heretickes shall also be burned Briton lib. 1. ca. 17. But such person as is to be burnt for Heresie ought first to be convicted thereof by the Bishop, who is his Diocesan where he dwelt and abjured it, and after if he relapse into the same Heresie, or another, and thereof be condemned in the same dioces, then he shall be sent to the secular power from the Clergy. To do with him as shall please the King, who may pardon him, if he will. The Forme of which Writt, viz, Fitz. nat. br. fo. 269 — whereof *vide plus* in the Statute of 25. H. 8. which repeales a former Statute of 2. H. 4. concerning burning of Heretickes. This Law concerning burning of houses is changed and

and some malefactors whom *Briton* names not, shall be burned, as women who murder their Husbands &c. A man was put into the stocks as suspected of Felony and there came one and let him out, this is Felony at the Common Law *de frangentibus prisonis* although the partie that escaped was not indicted of Felony. *Dyer. fo. 99.*

Between partie and partie the Pleas of the Crown may by way of appeale whatsoever it be, or mayhem, for in the Case of petit Treason appeale lyeth, but not in high Treason. *Litt. fo. 116.*

In Treason and the death of a man there shall be but one processe of Outlawry, be it murder or homicide, in other Felonies two as in Burglary, Robbery; and Larceny, in mayheme three before the processe of Outlawry. *Brookes processe 149. Finch in fo. 78.*

Mich. 4 and 5. Ph. and Mary.

ONE John Oldnoll a Yeoman of the guard was indicted, for words horrible and slanderous spoken of the Queen (more then three months before the Indictment) *contra formam diversorum Statutorum.* Without touching any particuler, and without any mention of these words in it (*scil.*) *unde scandalum in Regno inter Dominam Reginam & magnates vel populum suum oriri poterit, &c.* & being arraigned thereof he was convicted and what Iudgement he should have whether imprisoned and in prison detained, till he had found out in Court him by whom these words were moved, according to the Statute of *Westminster. Ca. 34.* Or whether according to the Statute of

12. Ri. 2. Ca. 11. (that is) that he shall be punished by the advice of the Councell, about which there was much debate, and doubt for the punishment by the Statute of 1. & 2. of the present King &c. was elapsed. But at length after great Consultaion and conference about the said Statutes of *Westminster* 1. And Ri. 2. it was agreed by the *Justices* and *Serjeant Browne*, that he should be imprisoned, and fined at the will of the King till he had found surety &c. according to the Statute of *Westminster* 1. and not according to the absterment or advice of the Councell, *Dyer* 155.

Finding this word *Fini* mentioned in this afore-recited Judgement, I remember the great dispute in the *Star-Chamber* about the fining of the Earle of *Susfolke* for some misdemeanor done, or suffered by him in his office of *Lord Treasurer* for which one of the Lords would have fined him 80000 l. which another opposed, saying he ought to be fined with a salvo continemento as a Merchant shall not be fined or amerced but saving to him his merchandise, and a villand, saving to him, his waynage, so an Earle to be fined saving to him his dignity of an Earle so that he was fined but at 30000 l. what the definition of Contenement is vide exp. *Termes in the Law.* fo. 80.

Pasch. 11. 7ocobi.

One sent a letter closed and sealed to Sir *Baptist Hicks*, which was delivered to his hands containing many dispirfull scandals delivered from him as saying, you will not play, the Jew nor the hypocrite, &c. whereupon Sir *Baptist Hicks* sued him in the

the Star-Chamber, and upon the hearing it was resolved. That though it were not proved that the Defendant had any way published it, yet the Court would hold Plea of it, and so did, and fined the Defendant, and sentenced him to weare papers, and make his submission to Sir *Baptist Hicks* in *Cheapside*: yet an action of the Case will not lye in that Case for want of publication. But the King and Common-Wealth are interested in it, because it is a provocation to a Challenge, and the breach of the Peace, *Hob. Rep. fo. 15.*

12. *Iacobi.*

THE Lord *Darcy* of the North sued *Gervase Marchham* Esquier for dispersing divers unsealed letters, the effect whereof was, that whereas the Lord *Darcy* had said, that but for him his man *Beckwith* had beaten him to rags, he lied, and as often as he should speak it, he lied, and that he would maintain it with his life; for which *Marchham* was fined in the Star-Chamber 500 l. and the reason of the sentence was, that this was a Compounded misdemeanor, for the letter thus dispersed was in the nature of a libell defamatory to the Lord *Darcy*; and the other point was, that though there were no direct challeng to the Lord *Darcy* to fight, yet there were plain provocations in it, and as it were to call and challenge the Lord *Darcy* to challenge him. *Hob, rep. fo. 120.*

13. *Iacobi.*

Paul Burrow exhibited his bill in the, Star-Chamber against *Maurice Lewellin* for writing unto him

him a dispirefull and reprochfull letter, which, for ought appeared to the Court, was sealed and delivered to his own hands, and never otherwise published. And it was resolved, that although the Plaintiff could not bring his action because it was not published, yet the Star Chamber for the King doth punish such offences, because such quarrellous letters tend to the breach of the peace and to stirring of Challenges. *Hob. rep. fo. 62.*

It was therefore a wholesome, and necessary ordinance of the 29 of *June 1650.* For the punishment of such as should make, send, or knowingly carry any challenge, by imprisonment and binding to the good behaviour. And that if any man be slaine in duell, the slayer shall be adjudged a murtherer; and that such as fight duells, though death ensue not, yet such fighters and their seconds should be punished with banishment, and upon returne to be adjudged Felons, and as such suffer death, and that provoking by disgracefull words or gesture shall be punishable by Indictment at the Sessions, and fine, binding to the good behaviour.

Certainely if this ordinance be put in Execution, it will save much blood, which would else be wilfully shed by rash spirits, which had need to be bridled by some severe Law, and be duly executed upon some to the terror of others.

In Queen *Elizabeths* time at an assembly of all the Judges and Barons, it was moved by *Anderson* Cheife Justice of the Common-Bench, whether men may Arme themselves to suppress Riots, Rebellions, and to resist Enemies, and endeavour to suppress such disturbers of the Peace and quiet of the Realme, and it was resolved, that every Justice of the Peace, and other Minister, or other Subject of
the

the King, where any such accident doth happen may do it, which resolution of theirs was grounded upon the Statute of 2. *Ed. 3. Ca. 3.* the words whereof are recited in the report, and that upon Cry made for weapons to keep the Peace, every man where such accidents happen for breach of the Peace, may by Law Arme himselfe against such evill doers to keep the Peace.

But they held it to be the more discreet way for every one in such a Case to attend, and be assistant to the Justices, Sheriffs, and other Ministers of the King in doing it. *Pop. rep. fo. 121.*

It was also at the same time resolved by them all (except *walsmeley, Penner* and *Owen*) in the Case of *Richard Bradshaw* and *Robert Burton*, who with others agreed between themselves to rise and put themselves in Armes, and so to go from one Gentlemans house to another, to pull down inclosures generally. And this so appearing by Confession or proove by two witnesses by the Statute of 13. *Eliz.* is high Treason, and all agreed that Rebellion of subjects against the Queen hath been alwayes High Treason at the Common Law. And the Statute of 25. *Ed. 3.* is, that levying of Warr within the Realme against the King is Treason, and Rebellion is all the Warr which a Subject can make against the King.

Against which *walsmeley* and the others vouched the Statute of 1. *Mar. cap. 12. 10.* That if any persons to the number of twelve or more assemble themselves together to pull down inclosures, &c. with force, and therewith continue after Proclamation made to go away, by the space of an houre,

that it is Felony. And if such Actions had been Treason at the Common-law, it had been to no purpose to make it Felony. And it seemed to them, that the resistance ought to be with force to the *Queen*, before that such Acts should be said to be Treason.

But all the other Justices agreed (and so it was put in ure about 36. *Eiz.* against the Prentices of London) that if any assemble themselves with force to alter the Law, or set a price upon victualls, or lay violent hands upon the Magistrate, and with force attempt to put it in Action, that this is Rebellion and Treason, though the Statute of 1. *May.* makes it but Felony. *ibi. fo. 122.*

Term 15. Jac. in Banco Regis.

Thomas Dedham had to Apprentice one Holland, who got his Maid with Child, and afterwards went from his Masters service, and staid one whole night with one Vaughan his Kinsman, and Dedham procured a Warrant from Sir St. Soame a Justice of Peace, that the Constable should bring Holland before him, and because Vaughan perswaded him to withdraw himself, so that he should not be taken, he was indicted: And it was agreed, that it was lawfull for Vaughan to lodge and relieve him, though he knew his misdeeds, they being neither Treason nor Felony. But Houghton Justice took exception to the Indictment, because no place appeared where he perswaded him to withdraw himself from the Warrant, or that in truth he did hide himself from the warrant, which if he did not, the perswasion was nothing.

And Dodderidge took another exception against the

the Warrant, because the Statute saith, that two Iustices, of which one of them shall be of the *Quorum*, shall proceed in such cases against the Malefactor, and that they shall compell the party to allow means for the maintenance of the Infant, &c. and this was not according &c.

In the same Term ibidem.

UPON an Indictment of Battery before the Iustices of *Wales*, a *Certiorari* was moved for to remove it into this Court: And it was said at the Bar, that it had not been seen from the time of *Ed. 1.* that such a Writ had been granted in the like case, and therefore that it ought not to be granted: But it was resolved by the Court, that a *Certiorari* should be granted, in regard it is the Kings case, though it ought not to be granted in the case of a common person, *Pop. rep. 144.*

Mich. 38, & 39. Eliz.

ONE *Everet* was attaint for stealing of a Horse, and reprieved after Iudgment, and indicted again for stealing of another Horse before this Attainder: And the Vicar of *Pelton* in *Somersetshire*, was Indicted as accessory before the Felony for the procurement of it: And *Everet* being again arraigned upon this last Indictment, did not plead that he was formerly indicted of another Felony, &c but acknowledged the Indictment, whereby the accessory was arraigned, tryed, and found guilty, and had his Iudgment as the principall, but the execution

execution of the accessary was respited, and the chief Justice at Serjeants Inne moved the other Justices, whether upon this matter it should be fit to execute the Accessary the Principall being executed: And they all agreed that he shall be executed, because the principall did not take advantage of his first attainder, but acknowledged the Deed, &c. But supposing the Principall had pleaded his former Attainder, whether now he shall be put to answer for the benefit of the Queen, having regard to this accessory, who otherwise should go quit, because there was not any principall, but he who was formerly attainted.

And it seemed to *Popham* and some others, that it shall be in the same manner as if the same person so formerly attainted should be now tried for Treason committed before his attainder, because it is for the advantage of the King in his escheat &c. *vide plus in Pop. rep. fo. 107.*

13. H. 7.

THE opinion of the Court in the Kings Bench was, that where a man is convict upon the Statute of Hurers made at *Westminster* 1. That the fine and imprisonment is for the King, and not for the partie. *Kel. rep. fo. 39.* The like matter is 16. H. 7. fo. 10. *parvo tracto.*

21. H. 7.

AT a Goale delivery held at *South-march* two were indicted of Felony, and being arraigned pleaded

Pleaded that they were taken out of the Sanctuary of *A.* by such persons, and praised the priviledg thereof, and to be restored; but would by no means plead over to the Felony although they were thereunto intreated by the Justices which declared unto them the Law, (*viz.*) that if they would not plead to the Felony, and it were found that they were not taken out of Sanctuary, the Felony should not be enquired of; neverthelesse they would not, and thereupon an inquest was taken, which found that they were not taken out of Sanctuary only, and not of the Felony, and the Sheriff commanded to carry them to the prison from whence they came, and there to suffer. *prima fort. & duce Kel. rep. fo. 70.*

21. Hen. 7.

IT was said by *Frowick*, that where there are a principall and accessory in Case of Robbery, the party may first commence his appeale against the principal, and afterwards he may commence his Appeale against the accessory. And he said, that it was adjudged *9. H. 4.* that a man had his appeale against the principall in case of murder, and after had another Appeale against him who abetted, hanging the Appeale against the principall. *Kel. rep. fol. 83.*

Keble said, that if one be indicted of Trespasse and Outlawed at the suit of the King, that he shall never plead, nor guilty, for by this Outlawry he is presently condemned. *Kel. rep. fo. 135.*

Pasch. 9. Hen. 8.

UPon the Insurrection in *London* it was resolved by all the Justices of *England*, that the Justices of

of *Oyer and Terminer*, cannot enquire one day and the same day determine, no more then the Iustices of the peace, &c. But the Iustices of the Goale deli very and Iustices in *Eyre* may well do it. *Kel. rep. fo. 159.*

7. Hen. 8.

ONe *Hunne* being by Doctor *Horsey* committed to *Lollards Tower* upon pretence of Heresie, was one morning found hanged in his Chamber, and it was given out by the Doctor, and the Goaler, that *Hunne* had hanged himselfe, but it being not believed, and the Goaler happily being conscious of his own wicked Act, took Sanctuary, and *Horsey* was upon the view of the body indicted, and afterwards came privately into the Kings-bench; & to the indictment pleaded not guilty, and *Eruely* the Kings Attorney (to gratifie the Clergy with whom there was then a great contest about the Kings power over the Clergy, and to abate their malice against Doctor *Standish*) confessed it, whereupon he was dismissed *Kel. rep. fo. 185.*

Term. Mich. 9. H. 8.

AN Indictment was taken upon the escape of certain convicted persons, without shewing before what Iustices they were convicted, and after the matter was examined by the Bar and Bench: the Indictment seemed insufficient, but the omission of the names of the Iustices of the Peace, before whom the Originall Inditement was taken, is not materiall, nor the specifying of the Felony. For it is sufficient if the Iustices certifie the body of the record of the attainder, or of the conviction, for that is enough for the King untill it be defeated by error *Kel. rep. fo. 194.*

A Great part of the Copie (Wherein the heads of all the matters in the Book containd) being at the Presse before the Whole was finished, there were some Collections omitted which should have been put under their proper heads, which because they could not then well be, the author thought to have set them aside, and not print them, but the particulars so omitted being by a judicious Gentleman seen, they were by him thought fit to be published with the rest; & so are, and may go (if you please) under the name of a miscellaneous appendix, and being but few, may by the diligent Student be quoted in their due places.

F I N I S.

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